Audubon Regional Medical Center *and* Nurses' Professional Organization affiliated with the United Nurses of America, American Federation of State, County and Municipal Employees, AFL–CIO. Cases 9–CA–31725–1, 9–CA–32276, 9–CA–33632, 9–CA–33565–1–5, and 9–RC–16332

June 22, 2000

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

On March 31, 1997, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief. On April 22, 1998, the Respondent filed a motion to reopen the record, and the General Counsel and the Charging Party each filed a timely opposition brief to the motion. On January 12, 1999, the Respondent filed an amended motion to reopen the record, and the General Counsel and the Charging Party each filed a timely opposition brief to the amended motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, briefs, and motions[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision, Order, and Direction of Second Election.[3]

This matter arose from an organizing drive by the Nurses' Professional Organization (Union) conducted among the Respondent's registered nurses (RNs) at Audubon Regional Medical Center (Audubon) located in Louisville, Kentucky. On January 5, 1994, after having obtained a purported majority of authorization cards signed by the RNs working at Audubon, the Union requested recognition from the Respondent. The Respondent denied this request. The next day the Union filed with the Board the instant representation petition, Case 9–RC–16332, seeking to represent the Audubon RNs.[4] The Union and the Respondent each conducted a vigorous campaign that culminated with the election held on March 3 and 4, 1994. The Union lost that election by a ballot count of 220 to 366, with a total of 54 challenged ballots, which were not determinative. Shortly thereafter, the Union timely filed objections to the election. Later, the Union also filed several unfair labor practice charges alleging numerous violations of the Act committed by the Respondent before and after the election during the period from January 1994, through January 1996.

1. The judge found that the Respondent had committed most of the violations of Section 8(a)(1) of the Act alleged by the outstanding complaints. He found that the Respondent had (1) unlawfully solicited grievances accompanied by promises to adjust them; (2) discriminatorily enforced posting rules affecting campaign literature; (3) unlawfully threatened employees by linking union support with plant closure or sale, job and benefit loss, discrimination, and discipline; (4) unlawfully stated that it would not negotiate if the employees selected the Union as their collective-bargaining representative; and (5) attempted to discourage the employees' union support prior to the election by announcing a wage increase, new long-term disability insurance benefits,[5] increased benefits for certain part-time employees, and a new committee to deal with RN staffing issues and complaints. We adopt these findings.

2. The judge also found that the Respondent violated Section 8(a)(1) and (3) of the Act by discriminating against employees Joanne Sandusky and Terry Hundley because of their union and/or protected concerted activities. He also found that the Respondent violated Section 8(a)(1), (3), and/or (4) of the Act by discriminating against employees

[1] The motions and oppositions to them are discussed in sec. II of this decision, infra.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have modified the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container*, 325 NLRB 17 (1997).

[4] The parties entered into a Stipulated Election Agreement on January 25, 1994. The unit consists of:

> All full-time and regular part-time Registered Nurses, including Pool Registered Nurses, employed by the Respondent at its facility at One Audubon Plaza, Louisville, Kentucky, but excluding all other employees, all other professional employees, all technical employees, all business office clerical employees, all skilled maintenance employees, all physicians, all nonprofessional employees and all guards and supervisors as defined in the Act.

[5] On February 16, 1994, approximately 3 weeks before the election, the Respondent issued a memorandum announcing that new long-term disability insurance benefits would be available to employees at some undisclosed future date. In this notice, the Respondent informed the employees that it had not yet decided on a specific plan for such benefits and needed to review the situation further to determine what plan would be made available in the future. In the same memorandum, the Respondent also announced an unlawful wage increase for the RNs and stated that "[t]his new Columbia pro-employee relations approach will provide all of us here more opportunities to make positive changes similar to what we are announcing today."

In affirming the judge's finding that the preelection announcement of new long-term disability benefits was unlawful, we note that the instant situation is distinguishable from *Weather Shield of Connecticut*, 300 NLRB 93 (1990), relied on by the Respondent. There, the pension plan announced on the day before the election was to become effective on a date certain, shortly after the election, and in fact had been a certainty for nearly a year before the election eve announcement. Unlike here, the employer in *Weather Shield* had already decided on the details and effective date for the pension benefits prior to the filing of the representation petition. Here, in contrast, the announced goal to have long-term disability benefits for its employees was still in its formative stages on February 16, 1994, and was conditioned on future action by the Respondent. The Respondent did not work out critical details, including the effective date for the disability benefits, until months after the election.

Gloria Gant, Patricia Clark, and Ann Hurst because of their union and/or protected concerted activities or because of their assistance and participation in these Board proceedings. We adopt these findings of unlawful discrimination against these RNs, but we provide, in section I, infra, further explanation regarding the violations involving Hundley, Clark, and Hurst.

3. The judge found that the preelection violations of Section 8(a)(1) described above also constituted objectionable conduct such that the election conducted on March 3 and 4, 1994, should be set aside. He also sustained three other objections to the election (identified in his decision as union objections 1, 4, and 5) alleging objectionable conduct not covered by the unfair labor practice allegations of the complaint. These objections were that the Respondent had engaged in objectionable conduct by insisting on the inclusion of RN applicants in the bargaining unit while selectively challenging their ballots (union objection 1); by soliciting employees to wear antiunion buttons (union objection 4); and by assisting in the establishment of an antiunion RN committee called nurses for nurses (NFN) and by promoting this committee through recruitment, financial assistance, and allowing NFN activities to occur on work time (union objection 5). We agree with the judge that the Respondent engaged in objectionable conduct warranting setting aside the election. However, we find it unnecessary to pass on union objections 1 and 4 and rely instead on the other conduct found objectionable by the judge.

4. Given the nature and extent of the pre- and post-election unfair labor practices committed by the Respondent, the judge concluded that the possibility of erasing the effects of the unfair labor practices and of conducting a fair rerun election by the use of traditional remedies was "slight to nonexistent." Citing *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), he found that as of January 5, 1994, when the Union requested recognition, a majority of the RNs had executed authorization cards designating the Union as their collective-bargaining representative, and that therefore, the Respondent should be held to have violated Section 8(a)(5) and (1) by refusing to recognize the Union as of that date and by its subsequent actions in unilaterally implementing a job redesign plan that reorganized the staffing and job duties of the RNs at Audubon in early 1996. Because of the degree and pervasiveness of the Respondent's unfair labor practices, the judge also recommended a broad cease-and-desist order, precluding the Respondent from "in any manner" interfering with, coercing, or restraining employees in the exercise of their rights guaranteed by Section 7 of the Act.

We agree with the judge that the nature and extent of the Respondent's unfair labor practices has rendered unlikely the possibility of erasing the effects of the unfair labor practices and of conducting a fair rerun election by the use of traditional remedies alone. However, for the reasons set out in section II, infra, we find a *Gissel* bargaining order remedy to be unwarranted here.[6] We have concluded instead that employee rights can be best served by directing a new election but also adopting the judge's recommended broad cease-and-desist order and ordering certain additional special remedies, including the submission of the names and addresses of current employees to the Union, a public reading of the notice to employees at Audubon's facility, and reasonable access to the Respondent's bulletin boards.

I.

The Respondent operates a large acute-care hospital, Audubon Regional Medical Center, in Louisville, Kentucky, with approximately 480 beds and over 600 staff RNs. Throughout 1993 and 1994, the Respondent went through a series of corporate mergers and divestitures. Prior to March 1, 1993, the Respondent was owned by Humana, Inc. In March 1993 Humana underwent a divestiture that split the organization into two companies: Galen, Inc. and Humana. Galen continued to operate Audubon and its three affiliated "sister" acute-care hospitals located in the Louisville area[7] until Galen merged with Columbia in June 1993. Then, on October 21, 1993, Columbia announced an impending merger with Hospital Corporation of America (HCA) which became effective on February 10, 1994. At the time of the election held on March 3 and 4, 1994, Columbia/HCA Healthcare Corporation was operating Audubon.[8]

After the March 1994 election, the Respondent began to utilize a new method of patient care delivery service, known as the patient focused care model, on its nursing units at Audubon. In the process, the Respondent consolidated RN jobs and modified RN job duties and responsibilities. To implement the new patient focused care model, the Respondent altered certain job titles and job descriptions within Audubon's nursing department in early 1996. As part of this job restructuring, the former charge nurse position was abolished and replaced with the new patient care leader (PCL) position, which had job responsibilities similar to those performed by the former charge nurse position. To fill the newly created PCL positions, the Respondent conducted an application and interview process among its current employees.

The judge found, inter alia, that RNs Patricia Clark, Terry Hundley, and Ann Hurst were discriminatorily denied certain full-time PCL positions that were available in mid-January 1996.[9] He found that all three discriminatees had

[6] Because we decline to find that a bargaining obligation arose on the basis of the Union's card majority, we also reverse the judge's findings that the Respondent violated Sec. 8(a)(5) and (1) by failing to recognize the Union and making unilateral changes.

[7] These hospitals are Suburban Medical Center, Southwest Medical Center, and University of Louisville Hospital.

[8] As more fully described in sec. II, infra, Alliant Health System, Inc. became the owner and operator of Audubon effective September 1, 1998.

[9] As more fully described by the judge, the Respondent also unlawfully (1) gave Hundley a low performance evaluation, (2) subjected her to an exit interview when she decided to voluntarily terminate her em-

engaged in protected activity and had been active union supporters.[10] He noted that Clark and Hurst had also testified in support of the Union's interests as witnesses for the General Counsel during an earlier phase of the hearing. Analyzing such factors as union animus and employer knowledge, the judge found that under the Board's *Wright Line*[11] causation test, the General Counsel had met his burden of proving that protected union activity and/or participation in the Board proceedings were motivating factors in the Respondent's decision to reject Clark, Hundley, and Hurst for the PCL positions in question. The judge then correctly observed that once this was established by the General Counsel, the burden shifted to the Respondent to show that its rejection of Clark, Hundley, and Hurst would have taken place even in the absence of any union or protected activity on the part of these employees. The judge found that the Respondent had failed to meet its burden in all three situations. As explained below, we agree that the credited evidence supports this view.

Clark, Hundley, and Hurst were experienced RNs who were qualified to perform the job duties and responsibilities of PCLs. Hired in 1977, Clark had been promised the next available charge nurse position by Audubon's former CEO in 1991. Employed since 1984, Hundley had worked as a full-time charge nurse at Audubon for approximately 5 years. Employed since 1981, Hurst also had considerable charge nurse experience at Audubon.

The Respondent does not dispute that Clark, Hundley, and Hurst possessed the necessary job qualifications for the full-time PCL positions. Yet, the Respondent awarded these jobs to Brenda Canary, Paula Case, and Lori Stewart, respectively. Canary, Case, and Stewart were RNs with less experience and seniority than the discriminatees. None of them were shown to be union supporters or participants in Board proceedings. Unlike Clark, none of them had been previously promised the next available charge nurse position. Furthermore, unlike the discriminatees, there is no evidence that Canary, Case, and Stewart had complained about inadequate staffing in their nursing units or had expressed any concerns or commented about any reservations involving the Respondent's job restructuring plan.

The Respondent contends that its selections of Canary, Case, and Stewart would have occurred regardless of any union or protected activity on the part of the discriminatees because (1) it promoted other union supporters and (2) it did not consider seniority in awarding the PCL positions. The record, however, shows that neither ground withstands scrutiny.

Regarding the first ground, the fact that the Respondent may have promoted other union supporters does not undercut the General Counsel's evidence that the Respondent acted out of animus with respect to Clark, Hundley, and Hurst. See *NLRB v. McCullough Environmental Services*, 5 F.3d 923, 927 (5th Cir. 1993). "[A] discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents." *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964) (citation omitted).

With respect to the second ground, the record lacks any explanation why seniority was not used in awarding the PCL positions in question. We have only the Respondent's bare assertion that seniority did not matter, but this appears to be inconsistent with Hurst's credited testimony that the Respondent used seniority in awarding promotions to other staff RNs during the restructuring process.[12]

We further note that Joann Anderson, the Respondent's vice president of patient care services and the chief nursing officer at Audubon, testified about the 1996 restructuring process at the reopened hearing in June 1996, but she was not questioned by the Respondent about the situations involving Clark, Hundley, and Hurst. In fact, none of the Respondent's supervisors and managers who interviewed the RN applicants or made the final selections for the PCL positions testified at the 1996 hearing. Thus, the record contains no explanation directly from the management officials involved, including Donna Cook (director of pediatrics), Jacqui Falk (clinical coordinator), Shannon McMahon (clinical coordinator), Karlene Pietranton (director of specialty services), and Joan Wempe (director of maternal and child nursing), concerning what selection criteria, if any, were actually used by them and resulted in bypassing Clark, Hundley, and Hurst for the PCL jobs. Without evidence of this kind, there is no basis on which we can find merit in the Respondent's claim that Canary, Case, and Stewart were better candidates or made better impressions in interviews.

Given these shortcomings in the Respondent's defense, we agree with the judge that the Respondent has failed to meet its burden under *Wright Line* of proving that it would

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ployment, and (3) denied her future employment with the Respondent on an on-call basis.

[10] Clark and Hurst were pictured in the Union's FACES election campaign booklet, and their pictures were also prominently displayed on a union billboard located near Audubon's facility. Clark and Hurst had engaged in various union activities, including wearing union buttons to work, leafletting with union campaign material, soliciting their fellow Audubon nurses to sign union authorization cards, and attending union meetings.

Clark became union president in October 1994. In that role, she later participated in a public candlelight ceremony and on a local radio talk show to publicize the Union's concerns about inadequate staffing that could result from the Respondent's decision to restructure the Audubon nursing units. Other nurses, including Hundley, had openly complained to management about inadequate staffing. To memorialize one such staffing problem on her shift, Hundley presented Darin Ford, her immediate supervisor, with a complaint form that the Union had urged its supporters to use during this period.

[11] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983), overruled in part on other grounds *Director, Office of Workers Compensation Programs, Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267, 276–278 (1994).

[12] Hurst testified that she observed that two clinical associate RN positions on her shift were awarded to RNs Michele Cowden and Pat Furguson based on their seniority.

not have selected Clark, Hundley, or Hurst even in the absence of their protected union activity and/or Board participation. Accordingly, we adopt the violations of Section 8(a)(1), (3), and (4) found by the judge.

II.

The judge found that the Respondent engaged in unfair labor practices after the representation petition was filed on January 6, 1994. The judge further found that this unlawful activity by the Respondent continued for many months after the March 1994 election among the RNs. He concluded that a bargaining order was appropriate under *NLRB v. Gissel Packing Co*.,[13] because, in his view, the nature and the extent of the Respondent's unfair labor practices have made slight the possibility of a fair second election among the RNs. He considered (1) the Respondent's many violations of Section 8(a)(1), (3), and (4), several of which are considered "hallmark" violations[14] of the Act; (2) the number and rank of supervisors and managers who committed these unfair labor practices; (3) the collective effect of this unlawful activity on all unit members; and (4) the continuation of the Respondent's unlawful conduct in 1995 and 1996. In these circumstances, the judge believed that the effects of the Respondent's unlawful conduct could not be erased by merely ordering the Respondent to cease and desist from engaging in it.

Approximately 6 months after the judge's decision issued, the Respondent filed a motion to reopen the record to introduce evidence of changed circumstances that allegedly negate the necessity of a remedial bargaining order. The Respondent argues that (1) every managerial employee who the judge concluded was involved in the commission of unfair labor practices or objectionable conduct in these cases has left Audubon's employ; (2) Audubon has experienced a 52.4-percent turnover in its RN staff since the commission of the alleged unfair labor practices and objectionable conduct; and (3) as of the April 22, 1998 filing date for this motion, more than 4 years have elapsed since the Union initially demanded recognition on January 5, 1994. In support of its arguments, the Respondent submitted a sworn affidavit from Debra Waite, who apparently became Audubon's acting human resource manager in September 1997. Attached to Waite's affidavit are two exhibits. Exhibit 1 is a 38-page comparison chart that covers the period of January 5, 1994, through April 1, 1998, and details the employment histories for those staff RNs who were included in the bargaining unit by the judge. Exhibit 2 is a one-page table entitled "Terminated Managerial Employees" that lists the names of 15 individuals who terminated their Audubon employment during the period of November 11, 1994, through January 1, 1998.

Approximately 15 months after the judge's decision issued, the Respondent filed an amended motion to reopen the record to introduce evidence concerning the alleged asset purchase of Audubon by Alliant Health System, Inc. (Alliant) on September 1, 1998. The Respondent alleges that Alliant has appointed its own team of senior management personnel at Audubon, replacing employees of Columbia/HCA Healthcare Corporation. Relying on such cases as *Impact Industries v. NLRB*,[15] *Koons Ford v. NLRB*,[16] and *NLRB v. Jamaica Towing, Inc*.,[17] the Respondent argues that "the change in ownership and management, as well as the substantial turnover in employees and passage of time, make it likely that a fair and impartial election could be conducted." In support of its argument, the Respondent submitted a sworn affidavit from Stephen A. Williams, Alliant's president and chief executive officer.

Both the General Counsel and the Union oppose the Respondent's motions. They contend that the evidence that the Respondent seeks to introduce through its motions concerning events postdating the Respondent's unfair labor practices is irrelevant under prevailing Board precedent. Relying on *Intersweet, Inc*.,[18] they argue that the appropriateness of the bargaining order remedy depends on an evaluation of the circumstances as of the time of the commission of the unfair labor practices. Thus, in their view, no purpose would be served by reopening the record to receive evidence concerning alleged changes in Audubon's ownership, management personnel, and employee complement that occurred several years after the unfair labor practices were committed by the Respondent. Neither the General Counsel nor the Union challenge the truth of the facts presented in either motion, the supporting affidavits, or exhibits 1 and 2 attached thereto.

We have decided to grant the motions and reopen the record to include the Respondent's evidence on managerial turnover and the transfer of company ownership and management from Columbia/HCA Healthcare Corporation to Alliant.

We would normally at least consider issuing a bargaining order in the circumstances of this case. However, the unchallenged evidence submitted by the Respondent shows that none of the supervisory or managerial employees who perpetrated the unfair labor practices is still employed by Audubon or is still associated with Audubon in any capacity. Stephen A. Williams, Alliant's president and chief executive officer, attests that since the September 1998 takeover of Audubon's operations "Alliant Health System, Inc. has appointed its own team of senior management personnel at Audubon Regional Medical Center replacing employees of Columbia/HCA Healthcare Corporation." Given this unrefuted contention that there has been 100-percent turn-

[13] Supra, 395 U.S. 575.

[14] See *NLRB v. Jamaica Towing*, *Inc*., 632 F.2d 208, 212 (2d Cir. 1980). ("Certain violations have been regularly regarded by the Board and the courts as highly coercive. These are the so-called 'hallmark' violations and their presence will support the issuance of a bargaining order unless some significant mitigating circumstance exists.")

[15] 847 F.2d 379, 383 (7th Cir. 1988).

[16] 833 F.2d 310 (4th Cir. 1987).

[17] Supra at 214.

[18] 321 NLRB 1 (1996), enfd. 125 F.3d 1064 (7th Cir. 1997).

over in management, and the long delay of the case here at the Board, we recognize that a bargaining order would likely be unenforceable in the courts. See generally *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1171 (D.C. Cir. 1998) (court expressed belief that substantial change in management could result in conduct of a fair and impartial second election despite employer's widespread unfair labor practices); *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078 (D.C. Cir. 1996) (court held that Board must allow an employer the opportunity to proffer evidence that passage of time or change in circumstances might mitigate need for bargaining order); *Research Federal Credit Union*, 327 NLRB 1051 (1999) (on Board request for remand of case, Board found bargaining order likely unenforceable in light of long delay and 76.5-percent change in management personnel that occurred after unfair labor practices); *Camvac International, Inc.*, 302 NLRB 652 (1991) (on remand from court, and applying court's directives, Board found that due to almost complete turnover of supervisors and managers and significant passage of time, bargaining order not warranted.) Accordingly, rather than engender further litigation and delay over the propriety of a bargaining order, we believe that employee rights would better be served by proceeding directly to a second election. See *Cooper Industries*, 328 NLRB 145 (1999).[19]

Although a *Gissel* remedy is not being imposed, we do find that certain extraordinary remedies are warranted.[20] The Respondent engaged in extensive and serious unfair labor practices when faced with the union organizing effort among its employees. As more fully described in the judge's decision, the Respondent violated Section 8(a)(1) by threatening employees with plant closure or sale, job and benefit loss, discrimination, and discipline; indicating that it would not negotiate with the Union; announcing a wage increase, new long-term disability insurance benefits, increased benefits for certain part-time employees, and a new committee to deal with RN staffing issues and complaints before the election; soliciting grievances and promising to adjust them; and discriminatorily removing union campaign literature. In *Wallace International de Puerto Rico, Inc.*, 328 NLRB 29 (1999), the Board stated:

> We have long held that threats of plant closure and other types of job loss are more likely than other types of unfair labor practices to affect the election conditions negatively for an extended period of time. *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993), enfd. 47 F.3d 1141 (3d Cir. 1995). Such threats serve as an insidious reminder to employees every time they come to work that any effort on their part to improve their working conditions may be met with complete destruction of their livelihood. *Electro-Voice, Inc.*, 320 NLRB 1094, 1095 (1996).

Under these circumstances, we find that special remedies are necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices, and to ensure that a fair election can be held. Our order will afford the Union "an opportunity to participate in this restoration and reassurance of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion." *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1054 (3d Cir. 1980).[21]

For the foregoing reasons, we shall order the Respondent to supply the Union, on its request made within 1 year of the date of this Decision and Order, the names and addresses of its current unit employees. We shall also order the Respondent, during the time the required notice is posted, to convene the unit employees during working time at its Louisville facility, by shifts, departments, or otherwise, and have a responsible management official of the Respondent's current ownership read the notice to employees, or at the Respondent's option, permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to the employees.[22] In addition, we shall require the Respondent to grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all other places where notices to employees are customarily posted.[23]

AMENDED REMEDY

We agree with the judge that the Respondent's unfair labor practices warrant a broad cease-and-desist order, requiring the Respondent to cease and desist from committing the

[19] Thus, we find it unnecessary to pass on the judge's findings and conclusion that a majority of the unit RNs executed authorization cards designating the Union as their exclusive bargaining representative and that the Union had such majority status as of January 5, 1994. We also therefore reverse the 8(a)(5) violation found by the judge in connection with the Respondent's 1996 job redesign plan, because at that time the Respondent was not obligated to bargain with the Union. See *Fiber Glass Systems*, 278 NLRB 1255, 1256 (1986), vacated on other grounds 807 F.2d 461 (5th Cir. 1987), supplemented by 298 NLRB 504 (1990).

[20] It is well settled that the Board has broad discretion when fashioning a "just remedy." *Maramont Corp.*, 317 NLRB 1035, 1037 (1995).

[21] The Board has previously ordered these remedies in cases where it found that remedial measures in addition to the traditional remedies for unfair labor practices were appropriate. See, e.g., *Research Federal Credit Union*, supra at fn. 17; *Cooper Industries*, supra at fn. 7; *Wallace International de Puerto Rico*, supra at fn. 4.

These remedies are in addition to the Union's right to have access to a list of voters and their addresses under *Excelsior Underwear*, 156 NLRB 1236 (1966), after issuance of the Notice of Second Election.

[22] Because those supervisors and managers who actively participated in the Respondent's antiunion campaign and unlawful conduct are no longer associated with Audubon, we shall permit the new ownership and managers, who had no involvement with the previous owners' past unlawful activities, to have this choice.

Chairman Truesdale agrees that the special remedy requiring the Respondent to supply the Union with unit employee names and addresses is warranted here. However, contrary to the majority, he would not impose the additional special remedies requiring reading of the notice and reasonable access to bulletin boards.

[23] See, e.g., *Three Sisters Sportswear Co.*, 312 NLRB 853 (1993), enfd. mem. 55 F.3d 684 (D.C. Cir. 1995), cert. denied 516 U.S. 1093 (1996); *United Supermarkets, Inc.*, 261 NLRB 1291 (1982), enfd. mem. 699 F.2d 1161 (5th Cir. 1983).

specific violations found and from violating the Act "in any other manner." In addition, we do not give the bargaining order and the 8(a)(5) remedy, but we give the following special remedies. We find that the Respondent's unfair labor practices are so numerous, pervasive, and outrageous that special notice and access remedies are necessary to dissipate fully the coercive effects of the unfair labor practices found. See generally *Fieldcrest Cannon, Inc*., 318 NLRB 470, 473–474 (1995), enfd. in relevant part 97 F.3d 65 (4th Cir. 1996), and cases cited there.

Accordingly, we shall order the Respondent to comply with the following additional remedies: (1) in addition to posting copies of the attached notice marked "Appendix" at its Louisville, Kentucky facility, convene during working time all employees at that facility, by shifts, departments, or otherwise, and have the Respondent's representative who signed the notice read it to the employees, or at the Respondent's option, permit a Board agent to read the notice. If the Respondent chooses to have a Board agent read the notice, then the Respondent's representative who signed the notice shall be present while the notice is read; (2) supply the Union, on request made within 1 year of the date of this Decision and Order, the names and addresses of its current unit employees; and (3) on request, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted.

ORDER

The National Labor Relations Board orders that the Respondent, Audubon Regional Medical Center, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing an employee that a fellow employee "burned her bridges" by engaging in union or protected concerted activities thereby implying that employees who engaged in such activities would be subjected to discrimination or discipline.

(b) Posting at its Louisville, Kentucky facility, a notice entitled "Audubon Regional Medical Center Staffing Improvement Plan" announcing the establishment of a committee to deal with employees' terms and conditions of employment in order to discourage employees' union or protected concerted activities.

(c) Announcing an increase in benefits for part-time employees and the implementation of a new long-term disability insurance benefit for all employees in order to discourage employees' union or protected concerted activities.

(d) Announcing a wage increase for all employees to discourage employees' union or protected concerted activities.

(e) Threatening employees that their organizational efforts were futile and that the Respondent would not negotiate with the Union in the event the majority of employees voted for the Union.

(f) Threatening employees that the Respondent would refuse to negotiate with the Union in the event they selected the Union as their collective-bargaining representative.

(g) Threatening employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative.

(h) Threatening employees that the Respondent would sell and/or close its hospital and that the employees would lose jobs if the Union were selected as their collective-bargaining representative.

(i) Discriminatorily enforcing a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted.

(j) Soliciting grievances from the Respondent's employees and promising to adjust them in order to discourage employees from supporting the Union.

(k) Discharging or permanently laying off an employee because she formed, joined, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(l) Giving an employee a low evaluation because she filled out a disclaimer notice or made oral statements, concertedly complaining to the Respondent regarding shortages in staffing and because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(m) Denying an employee a full-time patient care leader position because she and other supporters of the Union aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care, and thereby concertedly protested a change in a term and condition of their employment; and because she joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(n) Subjecting an employee to an exit interview and denying her employment on a call-in-basis because she filled out a disclaimer notice or made oral statements, concertedly complaining to the Respondent regarding shortages in staffing and because she joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(o) Issuing a written reprimand to an employee because she joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(p) Assigning an employee to second shift because she joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(q) Issuing an employee a low evaluation because she joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(r) Denying employees full-time patient care leader positions because since about September 1994 they and other supporters of the Union aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and they joined, supported, or assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

(s) Assigning an employee to second shift because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(t) Issuing an employee a low evaluation because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(u) Denying employees full-time patient care leader positions because they gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(v) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Joanne Sandusky full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position of employment, without prejudice to her seniority or other rights and privileges previously enjoyed.

(b) Make Joanne Sandusky whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, offer the patient care leader positions they sought to Terry Hundley, Patricia Clark, and Ann Hurst or, if such jobs no longer exist, offer them substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed.

(d) Make Terry Hundley, Patricia Clark, and Ann Hurst whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decision.

(e) Within 14 days from the date of this Order, expunge from its records any reference to the August 9, 1994 unlawful discharge or layoff of Joanne Sandusky, the December 12, 1995, evaluation of Terry Hundley, the August 17, 1995, written reprimand to Gloria Gant, and the January 31, 1996, evaluation of Gloria Gant. Within 3 days thereafter notify these employees in writing that this has been done and that the unlawful action against them will not be used against them in any way.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Supply the Union, on its request made within 1 year of the date of this Decision and Order, the full names and addresses of its current unit employees.

(h) On request, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted in its Louisville facility.

(i) Within 14 days after service by the Region, post at its Louisville, Kentucky facility, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1994.

(j) During the time the notice is posted, convene the unit employees during working time at the Respondent's Louisville facility, by shifts, departments, or otherwise, and have a responsible management official of the Respondent read the notice to employees or permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to employees.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaints in Cases 9–CA–31725–1, 9–CA–32276, 9–CA–33632, and 9–CA–33565–1–5 are dismissed only insofar as they allege violations of the Act not specifically found.

IT IS FURTHER ORDERED that Case 9–RC–16332 is severed and remanded to the Regional Director for Region 9 for the purpose of conducting a second election as directed below.

[Direction of Second Election omitted from publication.]

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT inform you that a fellow employee "burned her bridges" by engaging in union or protected concerted activities thereby implying that employees who engaged in such activities would be subjected to discrimination or discipline.

WE WILL NOT post at our Louisville, Kentucky facility, a notice entitled "Audubon Regional Medical Center Staffing Improvement Plan" announcing the establishment of a committee to deal with your terms and conditions of employment in order to discourage your union or protected concerted activities.

WE WILL NOT announce an increase in benefits for part-time employees and the implementation of a new long-term disability insurance benefit for all employees in order to discourage your union or protected concerted activities.

WE WILL NOT announce a wage increase for all employees to discourage your union or protected concerted activities.

WE WILL NOT threaten you that your organizational efforts are futile and that we would not negotiate with the Nurses' Professional Organization affiliated with the United Nurses of America, American Federation of State, County, and Municipal Employees, AFL–CIO in the event the majority of you vote for the Union.

WE WILL NOT threaten you with loss of benefits in the event that you select the Union as your collective-bargaining representative.

WE WILL NOT threaten you that we would sell and/or close Audubon Regional Medical Center and that you would lose your job if the Union were selected as your collective-bargaining representative.

WE WILL NOT discriminatorily enforce a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted.

WE WILL NOT solicit grievances from you and promise to adjust them in order to discourage you from supporting the Union.

WE WILL NOT permanently lay off or discharge you because you form, join, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT give you a low evaluation because you fill out a disclaimer notice or make oral statements, concertedly complaining to us regarding shortages in staffing and because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT deny you a full-time patient care leader position because you and other supporters of the Union aligned yourselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of your employment, and because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT subject you to an exit interview and deny you employment on a call-in-basis because you fill out a disclaimer notice or make oral statements, concertedly complaining to us regarding shortages in staffing and because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT issue a written reprimand to you because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT assign you to a different shift because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT issue you a low evaluation because you join, support, or assist the Union and engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT assign you to a different shift because you give testimony to the National Labor Relations Board in the form of an affidavit and for testifying on behalf of the Board.

WE WILL NOT issue a low evaluation because you give testimony to the Board in the form of an affidavit and for testifying on behalf of the Board.

WE WILL NOT deny you a full-time patient care leader position because you give testimony to the Board in the form of an affidavit and for testifying on behalf of the Board.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Joanne Sandusky full reinstatement to her former job or, if such job no longer exists, to a substantially

equivalent position of employment, without prejudice to her seniority or other rights and privileges previously enjoyed.

WE WILL make Joanne Sandusky whole for any loss of earnings and other benefits suffered as a result of our discrimination against her, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer the patient care leader positions they sought to Terry Hundley, Patricia Clark, and Ann Hurst or, if such job no longer exists, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make Terry Hundley, Patricia Clark, and Ann Hurst whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our records any reference to the August 9, 1994, unlawful discharge or layoff of Joanne Sandusky, the December 12, 1995, evaluation of Terry Hundley, the August 17, 1995, written reprimand to Gloria Gant, and the January 31, 1996, evaluation of Gloria Gant, and WE WILL, within 3 days thereafter, notify these employees in writing that this has been done and that the unlawful actions taken against them will not be used against them in any way.

WE WILL supply the Union, on its request made within 1 year of the date of this Decision and Order, the full names and addresses of all current unit employees of our Louisville facility.

WE WILL, on request, grant the Union and its representatives reasonable access to our-bulletin boards and all places where notices to employees are customarily posted in our Louisville facility.

AUDUBON REGIONAL MEDICAL CENTER

Theresa Donnelly and *Deborah Jacobson, Esqs*., for the General Counsel.
Thomas Birchfield and *Richard Cleary, Esqs*., for the Respondent.
Margaret A. McCann, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. A charge was filed by the Nurses' Professional Organization affiliated with the United Nurses of America, American Federation of State, County and Municipal Employees, AFL–CIO (Union)[1] against the Audobon Regional Medical Center (Respondent)[2] on March 25, 1994,[3] in Case 9–CA–31725–1. A complaint was issued on May 12. On September 23, in Case 9–RC–16332 the Regional Director for Region 9 of the National Labor Relations Board (Board) issued a report on objections to election in which he ordered that Case 9–RC–16332 be consolidated with Case 9–CA–31725–1. On October 17 the Union filed a charge against the Respondent in Case 9–CA–32276. On June 21, 1995, a consolidated amended complaint was issued in Cases 9–CA–31725–1, 9–CA– 32276 and 9–RC–16332 and on August 11, 1995, an amended consolidated complaint was issued in this proceeding. The latter alleges that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) collectively by, among other things, threatening employees, announcing the establishment of a committee to deal with employees' terms and conditions of employment and announcing increased benefits and wages, implementing a new long-term disability insurance benefit, soliciting grievances and promising to adjust them, discriminatorily enforcing a "posting" rule, and discharging or permanently laying off its employee Joann Sandusky because of her union or concerted protected activity. It is also alleged in the August 11, 1995, consolidated complaint that from about June 1991 to about January 5, 1994, a majority of the unit,[4] by executing authorization cards, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent and that the alleged unlawful conduct is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight and a bargaining order should be issued. Additionally, the June 21 complaint alleges various 8(a)(5) violations following the Union's January 5 request to bargain. Respondent denies violating the Act.

A hearing on these consolidated cases was held before me in Louisville, Kentucky, on September 19–22 and 26–29, 1995, November 6–9, 1995, December 4–8, 1995, and February 12, 1996.

On March 5, 1996, a complaint was issued in Case 9–CA–33632 alleging that from about January 5, 1993, to about January 5, 1994, a majority of the employees in the above-described unit, by executing authorization cards, selected the Union as their representative for the purposes of collective bargaining with Respondent; that since January 5, based on Section 9(a) of the Act, the Union has been the exclusive bargaining representative of the unit; that about December 1994 Respondent implemented a "job redesign" procedure to reorganize the staffing and job duties of the unit positions, which procedure adversely impacts the unit by reducing staffing and job duties; that this procedure relates to wages, hours, and other terms and condition of employment of the unit and is a mandatory subject for the purpose of collective bargaining; that Respondent did not afford the Union an opportunity to bargain with Respondent with respect to the conduct or the effects of the conduct; and that Respondent thereby violated Section 8(a)(1) and (5) of the Act. By my Order dated March 26, 1996, the motion of counsel for the General Counsel to reopen the record and consolidate this case with the above-described consolidated cases was granted. Respondent denies violating the Act as alleged in this complaint.

On April 8, 1996, a complaint was issued in Case 9–CA–33565–1, –2, –3, –4, and –5 alleging violations, collectively, of Section 8(a)(1), (3), and (4) of the Act in that since about September 1994, the supporters of the Union, by aligning themselves with the Union's position in protesting that the "job redesign" of the staff

[1] Hereinafter referred to as the Union.
[2] Hereinafter referred to as the Employer or Respondent.
[3] All dates are in 1994 unless otherwise indicated.

[4] The unit is as follows:

> All full-time and regular part-time Registered Nurses, including Pool Registered Nurses, employed by Respondent at its facility at One Audobon Plaza, Louisville, Kentucky, but excluding all other employees, all other professional employees, all technical employees, all business office clerical employees, all skilled maintenance employees, all physicians, all nonprofessional employees and all guards and supervisors as defined in the act.

would result in loss of jobs and reduced patient care, concertedly protested a change in a term and condition of their employment; that about September 15, 1995, and on subsequent dates thereafter, Respondent's employees, including Terry Hundley, by filling out a "disclaimer form" or by making oral statements, concertedly complained to Respondent regarding shortages in staffing; that subsequently Respondent gave Hundley a low evaluation, denied her a full-time patient care leader position, subjected her to an exit interview, and denied her employment on a call-in basis; that Respondent issued a written reprimand to its employee Gloria Gant, assigned her to second shift and issued her a low evaluation; that Respondent denied its employees Patricia Clark and Ann Hurst full-time patient care positions; and that Respondent engaged in certain of the conduct described above because the named employees gave testimony to the Board in Cases 9–CA–31725–1 and 9–CA–32276. By my Order dated April 19, 1996, the motion of counsel for the General Counsel to consolidate this case with the above-described consolidated cases was granted. Respondent denies these alleged violations.[5]

The reopened hearing was held before me in Louisville on June 3–6, 1996. Upon the record,[6] including the demeanor of the witnesses, and after due consideration of the separate briefs filed on August 19, 1996, by the General Counsel and the Union, and on August 20, 1996, by the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, has been engaged in the operation of a hospital providing acute medical care at Louisville. The complaint alleges, the Respondent admits, and I find that at all times material, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

Kay Tillow, who was an organizer for the Union in June 1991, testified that a card campaign began at Audubon Regional Medical Center (Audubon) on June 4, 1991. An organizing committee was formed and it met about every 2 weeks. She testified that the number of Audubon employees on the committee varied and that in January 1994, there were about 40 to 50 employees on the committee.

By letters dated February 9 and March 1, 1993 (GC Exh. 13(b) and (c)), respectively, the Union sent out a copy of "FACES OF NPO" (GC Exh. 13(a)), which is a 35-page booklet with pictures and written statements of some of the nurses at Audubon in support of the Union. The letters also enclosed a union authorization card (GC Exh. 13(d)). The March 1, 1993 letter, asked those who had already signed a card to update the card. Additionally, the February 9, 1993 letter, contained what purports to be the signatures and telephone numbers of some members of the organizing committee. By leaflet dated May 6, 1993 (GC Exh. 11), the Union indicated as follows:

> Audubon provides managers with disability pay. We urge Audubon to extend this tradition to all employees who do the caring—

As here pertinent, by memorandum dated September 22, 1993 (GC Exh. 3(a)), Marilyn Underwood Riley, Respondent's director of human resources, advised all employees at Audubon that, under the Columbia Employee Handbook, the benefits of certain part-time employees would be reduced from full benefits to prorated benefits, effective January 1. Columbia HCA had become owner of Audubon. Riley testified that in July 1993 when the hospital was owned by Galen Incorporated, a managers' manual was circulated and in the introduction a policy for the proration of time-off benefits was introduced; that the policy was supposed to be implemented in September 1993; and that the four sister Louisville hospitals opposed the plan because full benefits for less than full time was a good recruitment tool and they were advised that they would have until December 31, 1993, to work with the employees to adjust their schedules.

By leaflet dated October 4, 1993 (GC Exh. 12), the Union summarized changes which had occurred in the recent past at Audubon and what happened to some of the programs and benefits which Audubon was supposedly "looking into."

By documents dated November 3, 1993 (GC Exhs. 8–9), the Union advised employees at Audubon that a meeting was scheduled for November 16, 1993, to discuss obtaining short-term disability insurance through the Union.

Robin Deusel, who—according to her testimony—from January 1 through March 3 was the nurse manager of the recovery room, testified that in the fall of 1993 she had discussions with her staff RNs regarding a market wage adjustment, telling them during unit meetings that they "would be getting a raise the first of the year when all of the dust settled and the mergers and everything took place." On cross-examination Deusel testified that in August or September 1993, she told the nurses "its my understanding, or its my assumption that you'll be getting a raise about the first of the year"; that her telling the nurses in August 1993 about them getting a raise after the first of the year was based on her having learned in August 1993 that human resources was looking into a market adjustment; that she was aware that human resources compared the market on a regular basis; that she was aware that Audubon was behind the market for about 2 years before August 1993; and that in May 1993 she moved from staff nurse into a management position.

Joann Anderson, who at the time was Audubon's associate director for nursing, testified that in the fall of 1993 she regularly met with nurse management on a weekly basis; that the need for a market wage adjustment was discussed at those meetings in that Audubon was having difficulty in recruiting registered nurses (RNs) and patient care attendants (PCAs) at the time; that the market analysis that had been done by the human resources department indicated that Audubon was off the market as far as wages in both of these categories and that was a contributing factor in the hospital's ability to recruit; that it was discussed that there would be a market adjustment after the first of the year; and that no particular amount was mentioned during those meetings.

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[5] Respondent also denies that, as alleged in the complaint, David Vandewater was ever Respondent's chief operating officer or a supervisor or agent of the Respondent within the meaning of Sec. 2(11) and (13) of the Act. This appears to be a change in position in that in earlier answers Respondent appears to have admitted this allegation, except that in its answer in Case 9–CA–33632 Respondent denies that Vandewater was ever Respondent's chief operating officer and admits only that Vandewater is a supervisor or agent of Respondent's parent company, Columbia/HCA Healthcare Corporation within the meaning of Sec. 2(11) and (13) of the Act, and it takes the position that Edie Harper and Charlotte Freiberger were not supervisors or agents of Respondent within the meaning of Sec. 2(11) and (13) of the Act prior to the United States Supreme Court's decision in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994).

[6] The record includes over 650 exhibits and over 5000 pages of transcript covering the testimony of hundreds of witnesses.

In December 1993 or January 1994, according to the testimony of Respondent's employee Jane Gentry, when Columbia HCA took over Audubon the nurses were told that those who worked less than 40 hours a week would no longer receive full-time benefits. As a .9 (36 hours) full-time equivalent (FTE) employee, Gentry formerly received full-time benefits. Her sick leave and her vacation were decreased. Gentry testified that full-time benefits were restored to the .8 (32 hours) and .9 FTE nurses in the first part of 1994 because reducing the benefits was a very unpopular move on Columbia's part.

At some time in 1994 during the organizing campaign before the election, the Union issued a leaflet which asked "[a]re you better off today then you were in 1989." (See GC Exh. 10.) The document summarizes some of the alleged pertinent things which occurred between 1989 and 1994.

General Counsel's Exhibit 2 is a 16-page list titled "*TOTAL RN STAFF as of 1/5/94,*" which was produced by Respondent and given to the General Counsel in response to a subpoena. The General Counsel and Respondent stipulated that 21 individuals on the list are designated "MOBILE RN" and at the time they were temporary employees who are registered nurses (RNs) and not included in the involved unit. The General Counsel took the position that five of the individuals on the list were supervisors as of January 5 but Respondent would only concede that the five were supervisors effective May 23, the date of the decision by the United Sates Supreme Court in *NLRB v. Health Care Retirement Corp*., supra.

Riley testified that at some point in time before the petition for an election was filed by the Union she met with Vivian Flener and Lonnie Holthouser who asked for recognition. She advised them that the hospital would not recognize them and they would have to file a petition for an election.

On January 6 the Union filed a petition for an election. Woodrow Pugh, who was associate director of human resources at Audubon at the time, testified that after the petition was filed he, along with others in management, met with MSA, which was a labor consulting group. As covered on direct by the General Counsel and on cross-examination by Respondent, nurse managers at this meeting asked when the market wage adjustment was going to be given.

Gary Bensing, who is the vice president of human resources at the University of Louisville Hospital, testified that a few days before January 11, 1994, he prepared the wage and salary proposal for Ron Hytoff, the president of the University of Louisville Hospital (R. Exh. 40); and that the proposal was submitted to Gary Hill, the eastern division vice president. Bensing testified that at the time he submitted this salary and wage increase proposal he did not have any discussions with Riley at Audubon, he did not have discussions with anyone at Audubon or Columbia Healthcare Corporation's corporate offices, and no one at either Audubon or Columbia Healthcare Corporation directed him to submit the proposal; that at the time that he submitted the proposal he was aware that a petition for an election had been filed by the NPO "[b]ut that would have been through the, the newspapers, or whatever"; that before he submitted the proposal he "probably had some conversation" with someone at Audubon regarding the petition; and that when he submitted this proposal on January 11 he had not talked to anyone at Audubon about the petition being filed. Counsel for Respondent asked Bensing three times whether, when he submitted the proposal on January 11, he had talked to anyone at Audubon about the petition being filed before counsel finally elicited the testimony he was looking for. Bensing went on to testify that he submitted the proposal at that time because his hospital was behind the market and it was having a difficult time with recruitment and retention and it was losing people to Jewish Hospital and Alliant Hospital. On cross-examination Bensing testified that the Columbia HCA hospitals in Louisville had a medical insurance package that was superior to their competitors; and that in early 1994 he did not put the word out that there was going to be a market adjustment. In his memorandum of January 11 (R. Exh. 40), Bensing indicates that his hospital's existing benefit package was better than its competitors.

On January 17,[7] according to Respondent's Exhibits 51 through 61, 10 individuals became registered nurse applicants (RNAs) at Audubon after they received their temporary work permits (all between 12/15/93 and 1/7/94) to practice nursing. Anderson testified that these individuals were nurse externs who became RNAs between January through March 1994; that a nurse extern is someone who is in nursing school, has completed their first med-surg rotation in nursing school, and is brought into the facility to be support staff in the nursing department; that nurse externs do not have a guarantee of employment at Audubon; and that a nurse extern becomes an RNA when he or she has completed his or her nursing program, made application to the Board of Nursing for a Board permit, and he or she has received a work permit. On cross-examination Anderson testified that once a permit is issued the extern has the right to be an RNA; that all of the above-described individuals were working for Audubon prior to the receipt of their permit; and that they are not placed in an RNA position until RNA orientation starts and in this instance it started on January 17, which is when they were officially recognized as RNAs. Anderson testified that nurse externs are offered a position if they meet the requirements and if there is an RN position open for them; and that they are not left in that position if they do not pass the boards. On cross-examination Anderson testified that none of the nurse externs listed on Respondent's Exhibit 51 were included on an Audubon list of nurse externs as of January 5;[8] that while these individuals were not in Audubon's system as externs as of January 5, for them to be RNAs they had to have RNA orientation which is the first step as an RNA; and that the people on Respondent's Exhibit 51 were not as of January 5 considered externs for the purpose of payroll.

During the last week of January, Pugh was called to a meeting at Columbia's corporate headquarters in Louisville with the other human resource managers from the other local hospitals owned by Columbia HCA. Riley told him to get his compensation literature together because he would be going to a meeting with representatives of the four hospitals and with their regional human resources director to discuss the market wage adjustments. The meeting was attended by Bensing and Tony Vaughan, who is associate director of human resources at the University of Louisville Hospital, by Brian Hildreth from Suburban Hospital, Donna Borders from Southwest Hospital, by the regional director of human resources, and by himself and Riley. Pugh testified that, with respect to the registered nurses, those in attendance discussed being behind in the market and they might have joked about the Union coming into

[7] Jacqueline Augustine (hired 4/88); Martha Ballard (hired 1/93); Burnis Bragg (hired 7/93); Leslie Dalton (hired 1/93); Nancy Hummer (hired 3/93); Mary Mattingly (hired 7/93); John McGowen (hired 4/91); Michael Ohlemacher (hired 3/93); Sharon Wright (hired 3/93); and Cheryl Jones (hired 5/83).

[8] The stipulation of counsel for Respondent that those individuals listed on R. Exh. 51 were not externs as of January 5, 1994, was accepted.

Audubon; that twice during the meeting Neil Hinfield, who is the vice president of Columbia's corporate human resource department, which is above regional, came into the meeting; that the first time Hinfield asked how the meeting was going and if what we were doing "was going to . . . do what it took to . . . win this election"; that the second time Hinfield came into the meeting he said that Rick Scott, who is the chief executive officer of Columbia, said that they should do whatever it takes but get it done that day; and that at the conclusion of the meeting it was agreed that there would be a market adjustment raise of 40 cents per hour. According to the testimony of Pugh, General Counsel's Exhibit 7 is a summary of what was put together after the above-described meeting. The raises for specified registered nurse positions were changed on the document from 40 to 60 cents.[9] With respect to the notice to each individual employee concerning their market adjustment raise, Riley told him to print out the RN positions first and then to do all of the other positions in the hospital. Pugh testified that in 1991 he printed the market adjustment raise for all of the positions at the same time. Pugh also testified that the 1994 raise was to be effective after two pay periods; and that he could not recall any prior raises that became effective beyond one pay period (2 weeks). On cross-examination Pugh testified that when he attended the meeting to discuss wage increases Audubon was behind its competitors in the RN category; that about 1400 hourly employees at Audubon were impacted by the wage adjustment; and that in 1994 he believed that it took longer than one pay period to make the increase effective "in order to influence the outcome of the election" and since the raise was not effective until after the election, that gave employees "something to look forward to as they were voting" and for the employees to vote for the Union would amount to a declaration that the raise was not relevant whereas the raise was significant.

Riley, who when she testified in September 1995 had been the vice president of human resources for about 2 years and who previously had been the director of human resources, testified that she had knowledge of all wage and benefit changes which were made at Audubon since she became director in 1990; that a market wage adjustment is based on what Audubon's competition is presently paying so that Audubon can attract and retain personnel; that the market wage adjustment which was announced in February 1994 at Audubon was originally proposed in April 1993;[10] that Pugh worked with her on the April 1993 proposal; that the four hospitals in Louisville in the Columbia Healthcare network tried to keep their wage and benefit packages as much alike as possible, including the wage scales; that a little over 2000 employees worked at Audubon during the 1994 NPO campaign; that there are presently about 680 RNs employed at Audubon;[11] that there are a number of hospitals located within a 10-mile radius of Audubon; that historically Audubon's wages have lagged behind the wages of its competitors but its benefits have been somewhat better; that in March 1993 she received the Louisville Area Healthcare Human Resources Association report (LAHHRA) (R. Exh. 24), which is a survey of, among other things, wages and benefits at area hospitals done by the Red Cross, and she determined that Audubon was very much behind in the market; that in March 1993, she received Respondent's Exhibit 25 which is an annualized projected financial impact statement regarding proposed wage changes from Bensing at the affiliated University of Louisville Hospital;[12] that at the time Bensing proposed a 40-cent raise for RNs; that she proposed a 47-cent raise for RNs and the proposals were submitted to Doug Howell, who was the divisional human resources director; that in May 1993 Howell held two meetings regarding the proposals and he indicated at the second meeting that there was a possibility that the hospital might be bought by Columbia Healthcare Corporation; that subsequently she told Pugh that they were going to have to "sit on our proposal for a while" because of the rumored purchase; that Columbia Healthcare Corporation purchased Audubon on September 1, 1993; that as indicated in Respondent's Exhibit 26, on September 20, 1993, Howell requested that all proposed wage adjust-

[9] Pugh testified that Riley told him that the raise went from 40 to 60 cents

> because the MSA Consulting Group had conducted this meeting with several of the RN managers and had asked them, basically, "What would it take to just knock out the Union, get rid of them once and for all, would 60 cents do it, would some other amount do it?"
>
> And I guess they decided upon 60 cents, in this meeting. So, I was told to change all the RN positions from 40 to 60 cents.

In 1991 when Pugh came to Audubon it was owned by Humana, Incorporated (Humana). He had worked for Humana as a senior compensation analyst from 1989 to 1990. Other hospitals Humana owned in the Louisville area were Suburban, Southwest, and the University of Louisville Hospital. Pugh testified that in 1994 Columbia HCA owned all four of these hospitals; that at Audubon he developed proposals for market adjustment raises which were pay increases to bring Audubon up to the same level as employees at other hospitals in the area, which hospitals compete for employees; that the practice was to grant the market adjustments to all four of the above-described hospitals; that prior to the raise that was announced in February 1994 the last market adjustment raise at Audubon occurred in July 1991; that market adjustment raises were proposed between 1991 and 1994 but they were not approved by regional headquarters because, as indicated by Riley, they were too expensive; that he put together a market adjustment proposal in April 1993, GC Exh. 5, which called for a 47-cent increase for RNs and an average total increase for all job classifications of 59 cents, but it was denied, with Riley indicating that the regional manager thought it was too expensive and with Doug Howell of the regional office telling him that the region was not supporting any market adjustment; that he submitted proposals on a regular 6-month schedule; that when the next proposal was turned down he, along with other management individuals worked up a proposal in December 1993 covering the most pressing needs (GC Exh. 6); that the above-described December 1993 proposal did not propose any raise for registered nurses at Audubon and Riley had indicated in the fall of that year that salary increases for RNs, given the budget, were not a priority at the time; and that the December 1993 proposal was not acted on in 1993. On redirect Pugh testified that from 1991 to 1994, Audubon practiced the "lag" strategy in that it was behind the wage rates of other Louisville hospitals by about 50 cents but Audubon's benefits were worth quite a bit more than its competitors' benefits so it was deemed to be okay.

[10] GC Exh. 5. On cross-examination Riley testified that the average rate for an RN at Audubon was higher by 21 cents an hour than the other surveyed hospitals. Riley testified that while on the average Audubon's nurses were not behind the market, a market adjustment was proposed because Audubon's in-hire rate was 47 cents below the market and, therefore, Audubon could not compete for RNAs coming out of school.

[11] R. Exh. 18 is a list of the RNs, including nurse applicants who have applied for their licenses, working at Audubon as of September 1995.

[12] Bensing corroborated Riley. Bensing testified that with respect to R. Exh. 24, the Louisville area Healthcare Human Resources Association salary and benefits survey, he could not identify which hospital, by letter, the figures applied to, except he could recognize Audubon's figures; that he would not know whether it was Jewish Hospital, Alliant Hospital, or Methodist Hospital; and that when he sent out his proposal he was probably relying on telephone calls or information provided by his hospital's employees to determine what his hospital's competitors were offering.

ments be submitted as they were needed during the next 4 months; that based on the above-described September 20 memorandum Riley expected that an across-the-house market adjustment could be granted to employees at Audubon after the first of the year;[13] that during the 4-month or "stub" period she did propose a market adjustment for several specific categories of positions (GC Exh. 6), but not an across-the-house adjustment;[14] that at a management group meeting in October or November 1993, she told nurse managers who were present, in addition to other managers, that Audubon would be able to give a market adjustment across the house after the first of the year; that Howell resigned in late 1993; that his replacement, Rick Thomason, started sometime in January 1994; that in late January 1994, she learned that Bensing and the chief executive officer of the University of Louisville Hospital sent a memorandum to the vice president of the region requesting that they move forward with the market wage adjustment; that Bensing did not consult with her before he did this and she did not inform Bensing that a petition had been filed for an election at Audubon before he submitted the proposal; that Thomason contacted her and instructed her to prepare a proposal; that Thomason could not find the proposal Audubon submitted in April 1993; that contrary to the assertion of Pugh, the wage proposals were not being made to influence the election; that Pugh would not have had any conversations with Bensing in January 1994, because "we really didn't have a meeting. Most of those were phone conversations. No he wouldn't have"; and that she did not recall telling Pugh that University had made a proposal to corporate in mid-January.

RN Patricia Heck testified that she was a member of the committee at Audubon which was designated to help select a new charge nurse for the newborn nursery; that in January 1994 she had a conversation with Pat Martin, who was the evening supervisor; that Martin asked her who she wanted as designated charge nurse and she responded that Vivian Flener, in her opinion, was the best qualified for the position; that Martin said that Vivian has "burned some bridges" and "Vivian's burned some bridges in some high places"; that Martin then asked Heck if she was familiar with the "ICN Newborn Nursery letter"; that she told Martin that she was familiar with it but she had been on a 14-month leave of absence so she was not that familiar with what it said; and that she believed that General Counsel's Exhibit 143 was the letter Martin was referring to in this conversation. Martin, the administrative supervisor of nursing, testified that she had a conversation with Heck about the fact that Heck hoped that Flener would get the charge nurse position but she, Martin, did not say that Flener had burned her bridges in some high places; that rather she told Heck that "there's been a lot of water under the bridge regarding Vivian"; that when she made the statement to Heck she knew about the letter to David Jones, the president/CEO of Humana, regarding conditions in the intensive care nursery but she did not know that Flener, who worked in the newborn nursery, had signed the letter and she never assumed that Flener signed the letter which was from the intensive care nursery; that Flener had personal problems and at work she could come across negatively about everything; that she did not participate in evaluating applicants for the involved charge nurse position, which was never filled; and that the letter did not come up in her discussion with Heck that evening. On cross-examination Martin testified that the only thing that she was referring to with respect to "water under the bridge" was Flener's personal problems and how she handled them at work; that Flener was a competent nurse; that Flener complained about the way overtime was distributed, and understaffing; that she considered Flener's complaints to be constant and they were a part of the "water under the bridge" statement; that she was aware that there was an article in the newspaper regarding the letter to Jones concerning the conditions in the intensive care nursery but she did not remember any television coverage; that she never disciplined Flener for poor work performance during the period in question; and that Flener worked as a relief charge nurse quite often. Subsequently Martin testified that she had no input whatsoever with respect to Flener's application for the designated charge nurse position; that she believed that Donna Cook made the decision on this application; and that Cook was someone who Flener would normally discuss her problems with. Cook testified that the charge nurse position Flener applied for was not filled; that there were three applicants for that position and all went through the interview process; that the position was not filled because Audubon did not have the volume in that department to support that position; that Flener and Heck were both known union supporters; that it was her decision as to whether to fill the involved position; and that Flener was probably the strongest of the three candidates for the position. On cross-examination Cook testified that she respected Flener's professional and leadership abilities; that prior to the fall of 1993, Audubon and Suburban were owned by the same company and that company was merging with another company; that she believed that the charge nurse position was posted around August 1993; that in January 1994 it was announced that the position would not be filled; that the interview process was completed in December 1993; that the application process continued through December 1993, and the merger announcement did not affect going ahead with the interview process; and that the candidates were informed in December 1993 that there was a possibility that Audubon might not fill the position. Subsequently Cook testified that Flener did not have any negatives as far as being considered for the charge nurse position.

Heck testified that there are monthly staff meetings in the newborn nursery; that nurse manager Cook conducts the meetings; and that at a staff meeting in January 1994 she raised a question about part-time nurses being required to take a day off without pay when a full-time nurses took the hours when they had to make up a scheduled day and Cook said that at that point she could be flexible because there was no contract but if there was a contract, she no longer could be flexible on when she scheduled people. Cook denied making this statement, pointing out that she was just reiterating a longstanding policy.

Respondent's Exhibit 27 is a two-page memorandum titled "Audubon . . . Proposed Wage and Salary Adjustments February 8, 1994." Riley testified that she submitted this to Thomason in response to his above-described request; that the second page of the document had already been submitted to the region; that with this submission she deducted $85,000 which she had included in the prior submission to cover the pool people; that she reduced the prior proposal by 40 general office clerks; that the February 8 proposal was not an across-the-house market adjustment because her instructions were "Mr. Bensing has already presented a proposal, You need to put together something as quickly as you can and get it to me"; that she "put together very quickly what . . . [she] thought absolutely needed to be done"; that she took the major categories of positions at that time and made the sheet up for RNs, LPNs, pools for which Audubon was competing with Baptist East Hospital and some other positions; that she was proposing a market wage ad-

[13] She assertedly based this expectation on the fact that the memorandum states that the new scales will be effective January 1, 1994.

[14] On cross-examination Riley testified that GC Exh. 6 was submitted to the region in mid-December 1993.

justment of 75 cents per hour for RNs[15] vis-a-vis the 47 cents in her April 1993 proposal because it was almost a year later and the community had not stopped and she was still competing; that Audubon was experiencing a recruiting and retention problem in the above-described job classifications with a turnover rate of between 10 and 20 percent during the time they went without an adjustment to wages; that vacancies caused staffing problems; and that the total proposed cost of the February 1994 proposal was less than the April 1993 proposal because in 1994 she did not include as many positions. On cross-examination Riley testified that while her February 8 proposal called for a 75-cent-an-hour wage adjustment for first-shift RNs, Bensing was proposing a 40-cent-an-hour increase for this group; that Bensing was the one who did the survey comparison; and that subsequently she brought her proposal in line with what Bensing was proposing.

On February 10, according to the testimony of Riley, the merger was completed between Columbia and HCA. She testified that it would be better for Columbia HCA, which owns hundreds of hospitals, to take a hit for an across-the-board wage adjustment than Columbia which only owned about 80 hospitals at that point in time.

On February 11, according to her testimony, Riley received Bensing's proposal for a market adjustment (R. Exh. 29). Riley testified that this was the proposal that Bensing had sent to the region in January 1994, and she asked him to fax her a copy on February 11; and that she did not know if Pugh reviewed this document but she did not give it to him to review.

Respondent's Exhibit 28 is titled "AUDUBON . . . PROPOSED WAGE AND SALARY ADJUSTMENTS FEBRUARY 14, 1994." Riley testified that she and Audubon's chief financial officer (CFO) compiled this document; that they made adjustments to the above-described February 8 proposal in that she lowered the RN category from 75 to 40 cents, she lowered the LPN category from 60 to 40 cents, and she reduced the PCA category from 25 to 10 positions; that Bensing's proposal was more comprehensive than hers because she decided that she could adopt various parts of his proposal at the meeting which would be held to finalize the proposals, "[we] could sit down and we could go through these as we normally did, such was our process, that we could agree on the numbers between all four hospitals"; that her February 14 proposal was about $690,000 less than her February 8 proposal because Audubon's CFO wanted to stay competitive but yet stay within the budget for the hospital; that Bensing wanted an across-the-board adjustment and she agreed with that position; and that Pugh was involved in this process.

General Counsel's Exhibit 3(b), as here pertinent, is a letter dated February 16 from William Brown, president and chief executive officer of Audubon, to its employees which contains paragraphs dealing with (1) the reinstatement of benefits described above in the paragraph dealing with the September 22, 1993 memorandum, and (2) a new offer of disability insurance. Regarding the former, Riley testified that as of January 1, 1994, the process of proration of benefits began; that it took a lot of time to change employees' FTE status; that sometime in late January 1994, she learned that Bensing had made an independent decision not to follow the policy in that he circulated a memorandum in December 1993, indicating that present employees would be grandfathered in and the new policy would be applied to those hired after January 1, 1994;[16] that when Audubon started to implement this change in policy it was a "nightmare" in that the changes in the system had to be done on an individual basis and the system was making numerous errors; that the other sister hospitals in Louisville decided to grandfather in those employees hired before January 1; that at the time that Audubon decided to grandfather in people hired before January 1 there was a NPO organizing campaign but that had no effect on this decision; and that the decision to grandfather in people hired before January 1 was also made at Southwest and Suburban and it impacted all job classifications and not just RNs.[17] Bensing testified on cross-examination regarding the proration of benefits that his decision to grandfather in those who were hired before December 31, 1993, was approved by his CEO and Doug Howell; that his hospital was instructed in November or December 1993 to cease offering full-time benefits for .8 or .9 FTE employees but the offers to the new graduates were made 3 or 4 months prior to that time; that in this case his hospital was allowed to do something different than its other sister hospitals in Louisville; and that it was common knowledge among the employees in his hospital at the end of December 1993 that his hospital was not going to prorate the benefits of its existing .8 and .9 FTE employees.

With respect to the implementation of a disability plan, Riley testified that Audubon first considered the implementation of such plan in February 1993 and she spoke to Howell at the time about the possibility;[18] that on February 10, 1994, when the merger with Columbia HCA was completed she learned that the employees would be able to participate in a long-term disability plan in that Healthcare Corporation of America had a flexible benefit plan which included the disability plans; that while the employees did not participate in the long-term plan until January 1, 1995, Audubon announced the plan in February 1994 because she wanted to announce it as quickly as possible since it was a recruitment and retention tool and Audubon's competitors were offering disability to their employees; that all of the employees at Audubon were eligible for the disability plan through the flexible benefits plan;[19] that the hiatus between the announcement and the implementation was necessitated by the fact that all of Audubon's systems had to

[15] Plus a shift differential of an additional 9 cents for the second shift and 11 cents for the third shift.

[16] Bensing corroborated this. He sponsored R. Exh. 41, which is his memorandum dated December 28, 1993, to department managers and supervisors in which he indicates that the proration of benefits will not impact current employees. Bensing testified that his hospital had made offers to applicants in December 1993, and they accepted the positions based on the fact that they were going to get full-time benefits; and that the decision to grandfather in employees had nothing to do with the fact that NPO was attempting to organize certain of Audubon employees.

[17] Riley pointed out that the affiliated hospital, Sunrise, in Las Vegas, Nevada, decided not to follow it at all. The affiliated hospitals in Louisville did prorate benefits for those hired after January 1, 1994.

[18] R. Exh. 36 is a memorandum from Riley to Howell dated February 27, 1993, regarding short-term disability. R. Exh. 37 is a financial analysis of the short-term disability proposal from Riley to Howell dated April 13, 1993. Riley testified that what the employees ended up getting was a much better plan than what she proposed in this memorandum. R. Exh. 38 is a one-page document dated "5–14–93" which Riley testified were her notes taken at a meeting she had with Howell to discuss the disability proposal. Riley testified that at this meeting Howell indicated that such a plan could not be implemented just at Audubon, as the region was considering a plan which would take away the accrual of sick day time and replace it with a disability plan, a catastrophic plan would be exorbitant, and nothing would be done until it was determined whether ownership would go from Gaylen to Columbia.

[19] Riley explained that the employee chooses which benefits best meets their needs from among the medical, dental, like, long-term disability and dependent life coverage available.

go to the HCA system and those responsible for implementing the new system had to be trained; and that all of the affiliated hospitals in Louisville are on a flexible benefit plan. On cross-examination Riley testified that the disability plan that was announced in February 1994 was a completely different plan than the one proposed back in February 1993; and that the disability plan that was made available to employees effective January 1995 was announced by the human resources people at the other hospitals in management meetings and the other hospitals did not issue memorandums to the employees at those hospitals to announce the disability plan which would be available in January 1995. Bensing testified that employees at his hospital would have been advised in December 1993 or January 1994 about long-term disability being made available in January 1995, testifying "I think—yeah general, it would have been made known to employees." On cross-examination he testified that the long-term disability plan was announced to the employees at his hospital in writing in August or September 1994; and that he did not put it in writing before that because before that he did not know for certain that it would be implemented and if it was, when the long-term disability would actually be effective.

Respondent's Exhibit 30 is titled "AUDUBON . . . PROPOSED WAGE AND SALARY ADJUSTMENTS FEBRUARY 16, 1994." Riley testified that she and Audubon's CFO prepared this proposal; that the LPN market adjustment was changed from 40 cents an hour to an increase of 20 cents an hour; that specified shift differentials she had forgotten earlier were added here; and that this document was given to the regional human resource director.

Riley testified that after the above-described February 16 proposal there was a meeting in downtown Louisville where there was a review of Binsing's proposal, her proposal and the concerns of Southwest and Suburban; that they sat down and "hashed all through the final components of a market proposal"; that Pugh was at the meeting; that Neil Hemphill did come by the door of that meeting and "[h]e said hello . . . just general chitchat . . . how's everything going. That's about it"; that she did not recall Hemphill saying anything like "Do the right thing. Rick Scott wants this done";[20] that consultants from the MSA were present at this meeting because she needed some guidance regarding talking about a wage increase in the middle of a union campaign; that she was concerned about either granting or not granting a wage increase at Audubon at the time; that Bensing could not grant a market adjustment to his employees in February 1994 because wages and benefits were something that the affiliated hospitals in Louisville always did together unless it involved a spot adjustment which involved a limited number of positions vis-a-vis an across-the-board adjustment involving a majority of positions; that at this meeting the proposed market adjustment for the RNs went from 40 cents an hour to 60 cents an hour because Audubon and its affiliated hospitals had been losing nurses to Jewish Hospital and so they asked if it would be possible to try to get ahead of Jewish Hospital "for the first time in our life, and—or at least come in line with them"; and that the market adjustment was announced to the employees somewhere around February 20 and it was announced and implemented at the four hospitals in Louisville in the Columbia Healthcare network.[21] Riley further testified that the approval process involved the CEOs of the individual hospitals approving the individual packets as they were prepared, the packets then went to the regional human resource director and the final approval of the market adjustment was made by the president of the region, Gary Hill. Bensign testified that the decision was made to go to a 60-cent-an-hour increase for RNs because Jewish Hospital and Alliant Hospital would be giving an increase in the early spring and his hospital and its sister hospitals would no longer be competitive.

Between February 18 and 21 General Counsel's Exhibits 4(a)–(d) were distributed to the involved employees. All four documents relate to the market adjustment wage increase which was announced to employees prior to the election. Riley testified that all of the employees at the sister hospitals, namely, Audubon, the University of Louisville Hospital, Southwest Hospital, and Suburban Medical Center, received the announcement regarding the market wage increase at or near the same time;[22] that the adjustment cost a total of about $4 million annually to all four of these hospitals; that the annual cost of this adjustment, with respect to RNs, to Audubon was about $400,000; that since February 10, Columbia HCA has owned Audubon; that Columbia Healthcare Corporation owned Audubon from September 1, 1993, to February 10, 1994; that Gaylen, Incorporated owned Audubon from March 1 to September 1, 1993; that before that Humana Corporation owned the hospital from 1974; that prior to this adjustment the last time that the four area sister hospitals gave a market wage adjustment was in June 1991; that with the 1994 market wage adjustment there were variations among job classifications which took into account, among other things, recruiting and retention; that in 1994 the RNs received an adjustment of 60 cents and in 1991 this same group received a market adjustment of 60 cents;[23] that it is Audubon's policy that once a market adjustment has been approved it is announced to the employees and the process of entering the increase into the system is commenced; and that the hospital announces it before it is implemented because that is something that the employees want to hear especially since they had not received a market adjustment since 1991.[24]

[20] As noted above, Pugh, according to the transcript, testified that the name of the vice president of Columbia's human resource department was at that time Neil Hemphill.

[21] Those classifications which according to Riley were in line with the market or which had recently received an adjustment, approximately four including phlebotomists and EKG techs, did not receive this market adjustment.

[22] Columbia HCA owns and operates these four hospitals in the Louisville area. The announcments from Southwest, University of Louisville Hospital, and Suburban dated February 18, 21, and 18 (sic), respectively, were received as R. Exhs. 33, 34, and 35, respectively. On cross-examination, Riley testified that she supposed that Ronald Hytoff signed R. Exh. 34, "I know that when it was faxed to me, he had not signed the document yet." The announcement, which is dated February 21, 1994, was faxed on March 31, 1994. Bensing testified that his CEO, Hytoff, sent R. Exh. 34 out to employees on about February 21.

[23] See for example the 1991 and 1994 adjustment statements received as R. Exhs. 20 and 19, respectively. The 1989, 1988, and 1987 market adjustment statements for this same RN, Angela Pate (Blagrave), were received as R. Exhs. 21, 22, and 23, respectively. In 1989 the adjustment was $1, in 1988 it was 35 cents, and in 1987 it was $1.01. On cross-examination Riley testified that R. Exh. 20 does not have a date of issuance but it was effective June 30, 1991; that the normal process was that a document such as R. Exh. 20 would be issued several weeks before the effective date if all the entries can be made into the system and all the sheets printed so that employees can know what their salary increase is; that GC Exh. 433, dated June 17, 1991, is an announcement of the 1991 wage increase by Executive Director Brown, and that this demonstrates that there was a 13-day time lag between the effective date or the raise and its announcement. With respect to R. Exhs. 21, 22, and 23, the time lag between the announcement and the effective date was 2, 30, and 16 days, respectively.

[24] The 1991 increase was approved after the human resource directors from the four affiliate hospitals met and discussed it and that process took several months. Riley testified that there was union activity at

On a Saturday in late February (approximately 2 weeks before the election described below), according to the testimony of Pugh, Riley telephoned him at home, gave him the names of 25 to 30 of Audubon's employees and told him to go to Audubon, look up their telephone numbers, make a list and deliver the list to an RN who worked at Audubon and was in nurses for nurses (NFN), which is a group that believed that there should not be a union at Audubon. Riley and the RN who he delivered the list to told him the purpose of the list, namely, the NFN was going to telephone the people on the list who it was believed could vote either way in the election, and try to convince them to vote for Audubon. Riley testified that Audubon did not contribute any money to NFN; that she understood that doctors did independently contribute money to NFN; that the doctors are not employed by Audubon but rather they are given privileges and practice at the hospital; that NFN was not allowed to use hospital materials and equipment during the campaign; that she was aware that a NPO supporter used hospital equipment during the campaign in that Anna Long was initially disciplined (it was rescinded by Riley) for using the hospital fax machine for NPO related business; that Audubon did not pay any expenses of NFN; that she did not recall anything about the event that Pugh testified about where he was directed by her to deliver phone numbers to an RN on a Saturday morning; that Audubon did not recruit nurses to belong to NFN; that the NFN gave as its work telephone number the telephone number of the pediatric intensive care unit at Audubon but it was a common practice for employees to give their work telephone number when they are requested to supply a work telephone number; that some of the managers had antiunion buttons on tables but employees were not forced to wear such buttons; and that no one was forced to remove a button of any kind.

Tillow testified that the NPO obtained the names of nurses who worked at Audubon for a mailing list from a number of sources, namely, the nurses inside the hospital, the nurses themselves, and from lists purchased from the Kentucky Board of Nursing.

Miriam Gravatte, who in February 1994 was a staff nurse at Audubon,[25] testified that she founded NFN; that this group did not hold any meetings at Audubon; that she asked Riley for the addresses of Audubon's RNs so NFN could mail literature to them; that Riley gave her the list; and that NFN mailed and distributed a number of anti-NPO documents to RNs during the campaign.[26] Donna Porter, who was in NFN, testified that Gravatte asked for a copy of the *Excelsior* list and she, Porter, received it from Pugh outside of human resources; and that she was told that the list contained the names and addresses of the RNs who worked at Audubon during January 1994.

By letter dated February 21, 1994, from RN Pate to Riley (C.P. Exh. 15), the former requested "a list of all Audubon Regional Medical Center's Registered Nurses and their addresses." By letter dated February 23, 1994, Riley advised Pate "[t]he Human Resources Department does not supply that information to other employees and, therefore, I will not be able to grant your request." (C.P. Exh. 16.) On cross-examination Pate testified that she never asked Riley for the *Excelsior* list.

Sometime in the latter part of February 1994, according to the testimony of Audubon staff nurse Jane Gentry, Nurse Managers Karen Purviance, and Kay Kirby came to the coronary care unit (CCU) and, at the nurses station, they asked the nurses present, including Gentry, if they had any questions about the union campaign or about the administration or anything.[27] Gentry testified that she told Kirby that she, Gentry, did not have any questions but she would be happy to discuss the issues with her; that Kirby said she would be interested in knowing why Gentry supported the Union; that she told Kirby that there were a lot of issues that had to be addressed collectively and the Union was the only way to address the situation; that they discussed the value of specified committees and Kirby indicated that the administration was attempting to change the committee policy and involve more staff nurses; that Kirby said that "[w]hen the negotiations come down the playing field will be completely level and we will start with no benefits at all"; that she told Kirby that she, Gentry, did not think that the nurses would lose every benefit that they had presently; and that Kirby said "yes" it was her understanding that the benefits "would start from zero and that we would have no benefits and we would have to start from nothing, the ground floor, to get anything." Kirby testified that she wanted to ensure that the employees understood the issues; that she did rounds and she was in the CCU; that on one occasion she spoke with Gentry in the CCU; that Gentry started the conversation indicating that the hospital was shortstaffed; that Gentry asked her if they were going to start bargaining at zero benefits and she, Kirby, replied that she had never been through collective bargaining but we would negotiate in good faith on both sides; and that she has always asked employees if she could help them out or solve any problems that would make their job easier.[28] On cross-examination Kirby testified that when asked about collective bargaining she told the employees that you could end up with less in one area and more in another area; that she did not indicate to employees that they would wind up with more or less overall; that it was not her understanding that the employees could wind up with either more overall or less overall; that the employees could wind up with more overall or less overall; that when she spoke with Gentry she was in CCU not as a supervisor on rounds but rather as part of a program began during the union campaign whereby every 2 weeks she would make rounds to see if the employees had any questions;[29] that "probably, yeah" it was about the Union; that she did not say to Gentry that in collective bargaining the employees could wind up with more or less; that Gentry said "I hear that we might have to start negotiating at zero"; that she responded by saying that collective bargaining is negotiating in good faith; that one of the others present during her conversation with Gentry was nurse Mary Pohl; that she was not trying to persuade employees that it would be better if they did not bring a union in; that in her conversations with the employees she was trying to let them know that she thought it would be better if they did not have a union; that she never said to an employee that they should vote no or yes; and that she wore a button which said vote no in the election.

During the week before the election, according to the testimony of Audubon staff nurse Stacy Doyon (formerly Myers), she met

Audubon during June 1991. The 1991 adjustment became effective June 30, 1991.

[25] At the time she testified here she was a patient care leader.

[26] C.P. Exhs. 9–14.

[27] Gentry also testified that Purviance was a nurse manager in the cardiovascular unit (CVU) and Kirby was a nurse manager in the transitional care unit; and that normally you never saw nurse managers from other units on CCU.

[28] Kirby testified that she did this in her own unit only. Subsequently she testified that it was possible that people brought up problems and working conditions to her in units other than her own and in those instances she would write out the answer and tell whoever was in charge of that area.

[29] At the time of the hearing she was making rounds which extend beyond her unit of supervision about once every 6 weeks.

Vandewater, the chief operating officer of Columbia HCA, on the CVU at Audubon. Doyon testified that she was introduced to Vandewater by Purviance; that Laura Wood, the assistant director of nursing, was also present; that she wore union buttons at work and she passed out literature at work; that she was in the medication room when she was approached by Vandewater; that he motioned for her to come to the main station area; that he then said "[a]re there any problems or anything you'd like to talk about"; that she asked him why the hospital will not have a debate with the NPO people because a lot of people had questions that they wanted to pose to both sides; that he said that he felt no need to speak with a group of people who had no idea how to run a hospital and did not understand what his job entailed; that Wood mentioned a committee that was going to be made up of staff nurses addressing staff nurses' concerns, kind of a communication network between the staff and the administration; that she asked Vandewater what would happen if the nurses voted the Union in and Vandewater said "nothing" and "we will not negotiate . . . [n]othing will happen . . . . I will not negotiate. No Columbia Hospital has ever negotiated in the past and we will not negotiate"; that when she said "[b]ut what will we do" Vandewater answered "[w]ell you can strike or leave";[30] that as he left Vandewater shook her hand "[a]nd he shook it very hard. I . . . had to wait for him to let go"; and that five to eight staff nurses observed this conversation and subsequently she heard other nurses comment about the conversation.

During approximately the week before the election, according to the testimony of Audubon staff nurse Mary Blankenbaker, David Vandewater, the chief operating officer of Columbia HCA, came to her unit, labor and delivery, introduced himself to the nurses who were around the nurses station, said that he wanted to talk about the union vote and asked if the nurses had any questions. Blankenbaker testified that Vandewater was accompanied by Nurse Manager Karen Binder; that she asked Vandewater about the possibility of obtaining better short-term disability; that Vandewater looked at the prounion button she was wearing and at her name tag, said "Blankenbaker" out loud and then wrote something down on a pad that he had; that when nurse Terry Phelps asked about long-term disability Vandewater said "[w]e're getting a long-term disability program, [w]e have to wait and see what is best for everybody"; and that Vandewater said that he was good at his job "[w]e don't need a third party, please vote no. Give us time."

At the end of February Gentry asked Laura Wood if she would bring Vandewater to CCU. With respect to the subsequent meeting, Gentry testified that Wood, along with Lynn Smith, who was nurse manager of the emergency room (ER) at the time, came to CCU with Vandewater; that Wood introduced Vandewater to the nurses present; that Vandewater asked her if she had any questions and he took out a pencil and a note pad; that Vandewater said that he knew that she was involved in the Union; that Vandewater said if they involved someone else in policies and procedure it would just be more difficult for Audubon to get anything done; that she told Vandewater that she heard that he said that Columbia would never negotiate with the Union; that Vandewater denied saying that; that Vandewater said Audubon could not compromise and it would not change its stand on the issues, there would be an impasse and the only weapon the nurses had was to strike; and that Vandewater said that it was his job to see that the nurses did not go out on strike because it was his job to keep the hospital open. On cross-examination Gentry testified that she was an open organizer and supporter of the NPO and she was not sure if she was wearing a union button when she met with Vandewater.

On the Monday before the union election, February 28, according to the testimony of Bagby, Vandewater came to her unit at the behest of Gentry. Bagby testified that she asked Vandewater why wouldn't Audubon let the prounion nurses go to the meetings with Brown; that Laura Wood and Lynn Smith, who are directors at the hospital, said it was because they knew that the prounion nurses had already made a decision about the Union; and that Gentry said to Vandewater "Well, then you're telling us that you won't negotiate" and Vandewater said, "No, I'm telling you we won't change our minds . . . . [W]e won't change what we feel about the issues at hand." On cross-examination Bagby testified that Vandewater said, "We will not change our stand on the issues"; and that regarding meeting with Brown, she was told "Because we knew where you stood on the issues" and "we knew you'd already made up your mind." Wood testified that she was not aware of employees' complaints about not being invited to meetings conducted by Brown and she believed that many of the meetings were open.

Vandewater testified that Columbia HCA owns and operates 337 hospitals; that as part of his job he tries to tour at least 100 hospitals each year; that in February 1994 it came to his attention that there was a union organizing effort at Audubon and he had not had the opportunity to meet many of the Audubon employees;[31] that he takes notes when he takes these tours; that he remembered taking notes when he toured Audubon twice in February 1994 but he could not recall writing the name of an individual in his notes albeit that was a common practice; that on the tour he visited five or six units[32] and there were between five and ten employees on each unit; that he did not just speak to RNs; that he told the employees that there was a significant difference between Columbia HCA's personalized and accessible approach and Humana's structured approach; that he chatted with employees about issues associated with unionization and the operation of the hospital, and about healthcare legislation; that some employees were enthusiastic about his presence while others were not; that one employee would not shake his hand and some were "verbally abusive";[33] that some of the employees were angry; that on February 24 during his first tour with employees he spoke with a nurse in the critical care unit (CCU) about collective bargaining; that he "absolutely" did not remember saying "nothing" to a nurse who asked what would happen if the Union was voted in; that the nurse's testimony that he said "[W]e will not negotiate. Nothing will happen" is "absolutely untrue"; that in CCU the issue of collective bargaining came up when this fairly aggressive employee raised her voice to almost "an attacking pitch and indicated that she was going to negotiate the contract personally and I said 'I'm not going to be negotiating. I'm not going to be the one to negotiate the contract'"; that her testi-

[30] Former Audubon nurse Denise Davis overheard part of the conversation between Doyon and Vandewater. Davis testified that Doyon (then Myers) asked Vandewater what he would do if the Union was voted in and Vandewater said,

> [He] wouldn't consider talking with the Union at all. If they came in, he was not gonna sit down with them and talk over issues or anything. He said that we would just consider ourselves on strike. He didn't need the Union in there. He was good at what he did.

Davis also testified that Vandewater shook her hand and Doyon's hand.

[31] In an earlier visit in the fall of 1993 when Columbia HCA acquired Gaylen Healthcare Corporation he went to Audubon to meet with physicians and management.

[32] Manager Laura Wood testified that Vandewater visited six units the first day and seven units on the second tour.

[33] More specifically, he testified that some employees said that they did not want to talk to him and they were insulted that he was there.

mony that he said "[n]o Columbia Hospital has ever negotiated in the past and we will never negotiate" is "absolutely not true"; that Columbia has unions in its hospitals and it negotiates with them; that he absolutely did not remember answering "[w]ell you can strike or leave" when this employee asked "[b]ut what will we do"; that he did shake hands during his tour but he did not shake her hand very hard and he would not do anything to hurt that individual; that he "absolutely" did not say or intimate to the nurse in CCU that if the Union won the election she and the others would have to consider themselves on strike because that is not something you can say; that his second tour with the employees at Audubon occurred a couple of days after his first tour; that during his second tour the issue with respect to whether he would negotiate came back up in that a nurse said to him "we understand that you're not going to negotiate"; that he then said that "Columbia HCA has an obligation to collective bargaining, and we've got to do it in good faith . . . we do it in other hospitals around the United States"; that he told the employees that Columbia HCA has a staff of people who participate in this process and he was not one of them; that he never said to an employee during one of his Audubon tours that the hospital would not compromise on anything in collective bargaining, and that the only thing that the Union can do to change the hospital's mind would be to strike; that he "absolutely" did not tell an Audubon employee that she could consider herself on strike if she voted the Union in because "[i]t's against the law"; and that he "absolutely" did not during either day of the Audubon tours say that Columbia would not negotiate with the Union if it won the election, and on the second day he said just the opposite in that he said that Columbia HCA is obligated to collective bargaining. On cross-examination he testified that of the 337 hospitals less than 10 have had collective-bargaining agreements and all of them were already engaged in a collective-bargaining relationship at the time they were acquired; that Columbia HCA had never had a hospital change from an unorganized hospital to an organized hospital under its ownership; that Laura Wood was with him on both days when he toured Audubon; that he probably asked Wood to point out particular employees that she thought it might be important for him to talk with on a particular unit or they spoke to the manager of the unit who introduced him; that the employee in CCU who he spoke with was not the one who was verbally abusive to him; that strikes were discussed on both days of his tours; that he was sure that he brought up strikes in the context of it being the ultimate negotiating tool that the Union has; that he told employees that bargaining in good faith did not require the hospital to agree with what the Union wanted; that he told employees that the Union has two options, namely accept the final offer or go on strike; that he did not approve the raise that was granted to the RNs during the organizing campaign; that he does not normally approve of an across-the-board raise such as that and "generally speaking" that is approved at a lower level than him; that he did not consider his February 22 memorandum to all registered nurses at Audubon (R. Exh. 1), to be a campaign document notwithstanding the fact that the memorandum does not discuss anything besides the Union campaign, except that it indicates how big the company is; [34] that he could not tell exactly when the vote was taken; and that he could not tell if this memorandum was issued during the union campaign. Subsequently he testified that he assumed he was aware of when the petition for the election herein was filed and that he was made aware of the fact that the hospital won the election shortly after the election.

Regarding Vandewater's tours, Wood testified that she accompanied Vandewater on both of his tours, namely on February 24 and 28; that both tours began about 8 a.m.; that on the first tour Vandewater told employees that he did not feel that unions belonged in health care and there was a potential for disruption in patient care because of the possibility of strikes; that Vandewater told the employees that he felt that it was better for people to communicate directly with each other than through a third party; that on the first tour Vandewater spoke with Myers; that Myers confronted Vandewater about all the things that were wrong at Audubon; that Myers told Vandewater that when they sat down and negotiated the contract, they would be telling administration what to do and the hospital would have to do whatever the union said; that Vandewater told Myers that negotiating is give and take by nature and it does not mean that you ask for something and we automatically give it to you; that Vandewater told Myers that if there is impasse the hospital can make a final best offer and implement it and the staff, if it chooses not to work under the final best offer, can go elsewhere or they could go out on strike and he certainly hoped neither of those happened; that Myers was trying to intimidate Vandewater; that Myers was not intimidated by Vandewater; that she did not hear Vandewater say in the cardiovascular stepdown unit that Columbia would not negotiate with the NPO if it won the election; that she did not recall him saying in this unit that nothing would happen if the Union was voted in and he did not say I will not negotiate if the Union is voted in or no Columbia hospital has ever negotiated in the past and we will not negotiate; that Vandewater did not say that if the union came in, employees would have to leave or strike; that Vandewater occasionally joted down notes but she did not see what he was writing; that Vandewater shook Myers hand when he was introduced to her; that on February 28 Vandewater visited the CCU; that Gentry told Vandewater that when they were negotiating the contract the administration would have to talk to the nurses, something the administration did not do at the time; that Vandewater said that "I will not be at the bargaining table, and you know, probably neither will you"; that Bagby then said "Are you saying you're not gonna negotiate with us"; that Vandewater said, "No. No, Columbia will bargain in good faith. I'm telling you I personally, David Vandewater, won't be there and it's possible you won't be either, that there will be attorneys, negotiators, those are the people who will be talking then"; that with respect to whether Vandewater said in CCU that in the event of unionization that Columbia would make no compromises in collective bargaining, he indicated that Columbia would be there and would bargain in good faith; and that Vandewater did not say the hospital would only have one proposal in collective bargaining and staffing would not be part of it. On cross-examination Wood testified that on February 24 and 28 she stayed with Vandewater in all

[34] The memorandum reads, in part, as follows:

> (3) Columbia/HCA has every right to say NO to any of the Union's demands. We will bargain in good faith, but if we reach an impasse, our position is to implement our final offer and prepare for a strike. We recognize that a strike is the ultimate weapon unions use in negotiations. We also know that unions tell RN's that they will not strike, but have taken thousands of RN's out on strike.
>
> I have asked for a report showing me where the AFSCME has agreed, in contracts, to fewer benefits than what you have right now. This will enable us to go to the bargaining table and say, "AFSCME, you have agreed to this before, and this is what we want here."
>
> We do not like the adversarial process. We could all lose. But, if a majority chooses to vote for the union, we are prepared to exercise our legal and business rights.
>
> Please consider this before you vote.

the units he went to and she observed his actions the whole time; that RN Arlene Rice refused to shake Vandewater's hand; and that on February 24 she did not say anything to Myers about forming a committee to deal with staffing issues or concerns and she does not recall ever discussing this with Myers or any other nurse.[35] Subsequently Wood testified that she did not remember seeing Vandewater shake Myer's hand on February 24 at the end of their conversation and it was possible that he did and she did not see it; that Rice refused to shake Vandewater's hand on February 28; that with respect to Myers alleged attempt to intimidate Vandewater, Myers is 5 feet 6 inches tall and weighs about 150 pounds, and Vandewater is about 6 feet 3 inches tall and weighs about 200 pounds.

On rebuttal Myers/Doyon testified that she is 5 feet 6 inches tall and at the time involved she would have weighed about 120 pounds; that Vandewater did not say that negotiation was a give and take and a time consuming thing; that Vandewater said that he would not negotiate; that she did not tell Vandewater that if the parties couldn't reach an agreement that an arbitrator would come in and decide things; that she did not believe that during her conversation with Vandewater she behaved in a manner which could reasonably be considered rude or intimidating; and that she was extremely nervous during the conversation, she felt on the spot, she may have crossed her arms, and her tone may have increased because of her nervousness. On cross-examination she testified that when she asked Vandewater what would happen if the Union was voted in he said "nothing" and she said, "I'm confused" because it was her understanding that if the Union is voted in there would be negotiations and Vandewater responded that he would not negotiate; that when she asked Vandewater "[t]hen what would we do" Vandewater said "[y]ou would either have to leave or strike, I guess"; that at that point she felt intimidated; and that she did not remember if there was a handshake at the beginning of their conversation but that when Vandewater said, "I guess your choice is to strike or leave she stood up and said, "Thank you for your time" and they shook hands; that this handshake was very, very firm.

During that same week, according to the testimony of Blankenbaker, Nurse Manager Robin Deusel came to labor and delivery and spoke to the nurses present. Blankenbaker testified that Deusel, who did not work in that area, told her and nurses Gayle McKinley and Pat Waller that they had to vote against the Union because if the Union got in, the only power the nurses would have would be to go out on strike and if that happened, Audubon may not be able to recover; that Deusel said that if there was a strike, no patients would be admitted and if there were no patients, there would be no jobs; and that Deusel mentioned that a new committee was being formed and she encouraged the nurses present to get involved that way and see things change. Deusel testified that she did administrative rounds twice in February 1994 during the union campaign; that there were administrative rounds prior to 1994;[36] that on her first administrative rounds during the campaign Lynn Smith accompanied her and on the second, Earnestine (apparently referring to Muth), accompanied her; that during the first of these February 1994 rounds she showed a strike video with Smith to employees in all of the nursing units in the hospital, spending about 15 minutes in each unit; that one of the units she went to on the first rounds was labor and delivery; that there were about five nurses present in labor and delivery at 2 a.m., including McKinley; that she told the nurses that if the Union was voted in and it and the hospital could not come to an agreement, a strike was the last thing a union could do; that she told the nurses that the hospital would do everything within its power to keep the hospital open and running but the hospital might lose patients in that physicians would send their patients to another hospital; that she did not tell the nurses that they would not have a job if the Union won the election; and that she did discuss the Nursing Recruitment and Retention Committee regarding staff input and communications but she did not say anything about the staffing subcommittee. On cross-examination Deusel testified that the nurses asked about patient load if there was a strike; that she told the nurses that the discussion was all speculation; that when she was nurse recruiter she was co-chair of the Professional Directions Committee and she was on this committee when she spoke to the nurses in February 1994; that the committee had discussed establishing two subcommittees, namely one for recruitment and one for retention; that she could not recall a subcommittee being established in February 1994 to deal with the issue of staffing; that in her discussions with nurses she believed that she was impartial regarding unionization but she was not sure whether she wore a "Vote No" button; and that while she recalled that the strike video, which she played about 20 times in the various units, contained a presentation to the employees from Rick Scott,[37] she could not recall if Scott indicated on the video the recent announcement of wage and benefit changes that were going to take place at the facility but she recalled him asking employees to give Columbia a chance. While Deusel testified that she never told an employee how to vote, she conceded that the video itself indicated that the employees should vote "No." Subsequently Deusel testified that she showed the video at the nurses stations and that someone at the counter trying to get the nurses attention, either a patient or a family member of a patient, could actually see the video while it was being shown.

Regarding the Professional Directions Committee, Anderson testified that it was in place for several years when she came to Audubon in the early 1990s; that the committee's basic responsibilities were to review and assist in the recruitment and retention activities at the hospital; that the committee participated in activities at the various colleges with respect to recruitment, they manned the booths for the Kentucky Nurses Association Convention, they tracked and trended turnover rates, and they looked at trends in staffing and scheduling; that the committee was made up of both management and staff personnel; that staff participated voluntarily; that the committee is chaired by a manager and beginning in January 1993 Donna Cook assumed the chair; that Cook, with the help of staff members, made the decision that the committee would go to subcommittees, namely one for recruitment, one for retention and one for staffing; that she could not give a specific date as to when these committees were first discussed but by the summer of 1993 their initiation was discussed; that the activities of the Professional Directions Committee were not widely disseminated among employees; that during the organizing campaign Audubon notified nurses about the formation of a staffing subcommittee because some of the staff were concerned about staffing and they felt that no one was listening or doing anything about it; that management believed that the announcement might help staff realize that staffing was being evaluated at multiple levels and not just at the ad-

[35] Wood testified that she was aware that during the union campaign there was a discussion about forming a subcommittee to look at staffing issues.

[36] Anderson testified that nurse managers did "focus" rounds every other week throughout the units since the beginning of 1993; and that not all nurse managers were involved in the nurse management rotation, as far as rounds were concerned, in 1993.

[37] He was described here as the president of Columbia Corporation.

ministrative level; and that shortly after the election it was determined that there was not a lot of interest in that particular subcommittee and it was abolished. On cross-examination Anderson testified that she was confident that by the summer of 1993 the decision had been made to form the three above-described subcommittees.[38] Cook testified that she was appointed to the chairmanship of the Professional Directions Committee (PDC) by Anderson in the late fall of 1993; that before then the PDC had been dormant; that she held one meeting of the PDC in early January 1994 and the second meeting in February 1994; that she wanted the PDC to focus on recruitment, retention and staffing; that staffing was broken out as a separate subcommittee which would then report to recruitment and retention; that there was an announcement made regarding that subcommittee and the other subcommittees established in the hope of getting employees to participate on the committee and to promote the work the committee was doing; that she shared her plan with Anderson before the announcements; and that the staffing subcommittee dissolved itself in the spring of 1994, about 5 weeks after it started, for lack of attendance at the meetings. On cross-examination Cook testified that the staffing committee first met in March 1994; that it could have been in January when the plan for subcommittees was formulated; that the one-page announcement about the PDC soliciting for membership was distributed in February 1994; that the first meeting was in March 1994; that she did not tell Anderson in the summer of 1993 that she, Cook, was planning to establish a subcommittee for staffing; that she could not have told Anderson about such a plan until sometime in January 1994; that staffing was an issue that was being raised by the Union during the campaign and she was aware of some of the union literature which spoke to staffing problems at the hospital; that she did not know that the Union was raising the issue of staffing at the time she was considering what to do in her leadership of PDC; that Flener told her that the Union could help alleviate the staffing problems which existed in the hospital; that the fact that the Union was raising staffing as an issue may have been mentioned at management meetings during the campaign; that part of Respondent's aforementioned September 6, 1994, position statement to the Board, are the minutes of PDC meetings and they demonstrate that the subcommittees and the general overall plan was first discussed at a PDC meeting at the March 8, 1994 meeting; that the announcement seeking people to join the PDC went out after the March 8 meeting; and that all three of the subcommittees were dissolved by the summer of 1994. Subsequently Anderson testified that she had no role in the preparation of the September 6 position statement nor did she review it prior to testifying at the hearing herein; and that she appointed Cook to the PDC in December 1993; that she was wrong in her earlier testimony that Cook became the chairperson in January 1993 in that this occurred in January 1994.

The General Counsel and Respondent stipulated that a larger version (about 2 feet by 3 feet) of General Counsel's Exhibit 419 was placed on an easel in the hospital in February 1994. The poster reads in part as follows:

What are we doing about staffing?

Here is part of the staffing answer . . .

AUDUBON REGIONAL MEDICAL CENTER STAFFING IMPROVEMENT PLAN

. . . .

4. A focus action team composed of staff RN's, LPN's, Nurse Managers and a staffing consultant, will be developed using the current Professional Directions Committee to develop short and long term staffing solutions.
5. The focus team and Professional Directions Committee will be charged with developing a plan to eliminate mandatory overtime within the next six months.

. . . .

WE ARE BEING RESPONSIVE

About 1 week before the election, according to the testimony of Steven Nanz, Supervisor Deusel came into his unit, open heart recovery, and answered nurses' questions. Nanz testified that Deusel said that if the employees did join a union, they would lose their benefits, the hospital did not have to negotiate with the union, and the hospital would most likely close; and that Deusel and Earnestine Muth were making administrative rounds to inform the nurses of what was going on. On cross-examination Nanz testified that the nurses were asking Deusel questions about what would happen if they went union; that Deusel and Muth said that they were on his floor to answer questions about the union vote; that Deusel and Muth were nurse managers from other units; and that Deusel said that the employees had no guarantees that they would have benefits if they went union, the hospital did not have to negotiate, and most likely if the hospital went union the hospital would be sold. Deusel testified that she did speak with the nurses on the open heart unit about benefits and she indicated that if the Union won the election, all benefits and salaries would be negotiated; that she did not tell the nurses that if the Union won the election they would lose benefits; that they discussed the hospital having been bought and sold but they never discussed the hospital being sold as a result of the union campaign; and that the staff brought up the hospital being sold; that she never said that if the Union won the election, the hospital would be sold or Columbia would sell the hospital.

The aforementioned August 11, 1995, amended consolidated complaint alleges that Respondent, as here pertinent, by Karen Purviance in February 1994 discriminatorily enforced a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted. Stacy Doyon testified that she posted a letter from nurses in California supporting the union and she posted it on the front of the refrigerator in the kitchen which also served as the nurses lounge; that Purviance took the letter down and threw it away; that this exercise was repeated; and that there was other campaign literature posted on the bulletin board adjacent to the refrigerator, and on the back of the kitchen and restroom doors. On cross-examination Doyon testified that the Union and the hospital posted materials on bulletin boards. Subsequently Doyon testified that the involved refrigerator door was used to post notices of mandatory staff meetings or something important like flyers from the pharmacy, and notices regarding infection control or new drugs. Purviance testified that there are three bulletin boards in the CVU unit; that at the time of the election it was her understanding that election campaign material was to be placed on the general bulletin board in the kitchen area only; that she removed campaign literature which was posted on the wall beside the telephone in the unit and on the refrigerator in the unit; that she saw NFN materials posted on the refrigerator in the break room; and that she would try to keep all election campaign material on the one bulletin board in the unit. On cross-examination Purvi-

[38] Respondent's September 6, 1994, position statement to the Board regarding the Professional Directions Committee was received as GC Exh. 446. The statement does not indicate that the decision to form subcommittees was reached in the summer of 1993.

ance testified that that portion of the general bulletin board on which election campaign literature was posted on was pretty full; that the employees posted notices in the areas around the bulletin board, on the refrigerator, and on restroom doors; that during the campaign she received written information from administration about what could be posted where; that this information was conveyed verbally to the employees; that ambulating patients can use the elevators in the CVU unit designated "For Staff Use Only"; that she would consider this area to be a patient care area; and that the hospital placed an election campaign poster in this area. Purviance also testified that the refrigerator was used by the families of open heart post-op patients to refrigerate food which these patients might prefer over hospital food. On further cross, Purviance testified that she physically handed a number of communications from administration to each employee on her unit.

In mid-February, according to the testimony of Linda Grasch, who was formerly employed by Respondent as a registered nurse, Nurse Manager Cook, who was Grasch's supervisor at the time, told her and several other nurses who were in the nursery, including Donna Williams, that "if the Union got in that they would close the hospital. That they had some 200 and some hospitals and they didn't worry about one." On cross-examination Grasch testified that Audubon went through a number of ownership changes in the year preceding the election herein, namely, from Humana, to Gaylen, to Columbia, to Columbia HCA; and that Cook gave an exact number of hospitals when she made her statement about closing the hospital. Cook testified that Grasch asked her if the hospital would go out on strike; that she told Grasch that the hospital would do everything that it could to avoid a strike; that she did not tell Grasch that Columbia would close the hospital if the NPO won and Columbia had more than 200 hospitals and they did not worry about one; and that during the campaign she did not tell any employee that the hospital would close if the NPO won the election. On cross-examination Cook testified that she may have had other discussions with Grasch during the campaign but she, Cook, could not recall them.

In late February, approximately 1 week before the election here, Nurse Managers Theresa Munson and Sandy Bishop, according to the testimony of Vivian Flener (now Zollman), who at the time was a registered nurse working at the involved facility, came to the newborn nursery with a television and videotape machine and said that they had a video for Zollman and registered nurse Pat Heck to watch. Zollman testified that she asked the managers if it was the strike video and when they replied yes she said that she was not interested in seeing it; that she told the managers that she would be interested in talking to them about the Union and the issues; that Bishop asked them what did they hope to gain from having a Union in place; that at one point Bishop said that Vandewater had already said that he will absolutely not bargain with the Union and the employees would have to go out on strike; that she told Bishop that it was a Federal law that if the Union was voted in the employer had to bargain in good faith and Bishop again said that Vandewater already said that he would not bargain with the Union; and that prior to the union campaign it was not common for other nurse managers to be in her department. In July 1990 Flener signed a complaint regarding "[a] severe understaffing problem in the Intensive Care Nursery" at the involved hospital (GC Exh. 143). On cross-examination Zollman testified that she openly organized for the Union; that during the election campaign she was co-vice president of the Union and she was a member of the organizing committee; that she signed a document which demanded recognition; that she participated in drafting campaign literature that was handed out to nurses; that she handed out union literature to nurses at Audubon; that Respondent's Exhibit 5, which is a six-page document covering what the employer may say and "REALITY" was distributed to nurses at Audubon during the election campaign;[39] that Heck is also a member of the Union organizing committee; that she and Heck were open and obvious union supporters; that her affidavit to the Board indicates that Bishop said Vandewater had already said that he would not bargain with the union and the employees would probably be forced to go out on strike but the affidavit does not indicate that Bishop reiterated this after she, Zollman, told Bishop that it is a Federal law that you have to bargain in good faith; and that she was a vocal supporter of the Union and she did not try to keep her support a secret. Heck testified that when she mentioned that she had a problem with some backpay Bishop said, "[w]ell what do you think a union can do for you; that Bishop said "as you already know, Mr. Vandewater has said that he will not negotiate. Now how do you feel about going out on strike"; and that Munson and Bishop were in her unit for over an hour. On cross-examination Heck testified that she signed a letter asking Bill Brown for a debate (R. Exh. 7); that she believed that her conversation with Bishop occurred on February 26;[40] and that during this conversation she did make a statement that if unionizing meant going out on strike that she would be willing to do this. Sandra Bishop testified that during the involved organizing campaign she was nurse manager of the cardiovascular telemetry unit; that one evening when she made rounds showing a video concerning strikes she went to about 20 units, including the newborn nursery; that she was accompanied by Munson; and that she recalled talking to Flener and Heck that evening and while she could not recall the content of her conversation with these two RNs, she believed that she would not have said anything that was unlawful. On cross-examination Bishop testified that she could not remember whether prior to the union campaign she ever made rounds during the evening or night shifts with other nurse managers; that there was a period when there was no system of doing rounds and she was not sure when the system under which she did rounds began; that when her nurse manager position was eliminated she was awarded the director position over some other applicants; and that she could not recall on how many of the 20 units she showed the strike video and she could not recall whether Rick Scott was on the video. Subsequently Bishop testified that she began showing the video at 7:30 p.m. and she was on each unit approximately 15 minutes; that she could not recall how many units agreed to view the video; that visiting hours end at 8:30 p.m., some visitors stay beyond that time but they stay in the patient's room; and that she did not recall any visitors to the hospital seeing the strike video.

At the end of February, according to the testimony of Vivian Kleitz who was a staff RN in the ER at Audubon from 1988 to March 1995, Laura Polson, who during the union campaign was nurse manager of the cardiac cath lab, asked her and the three or four other nurses present if they had any questions about the Union

[39] At the bottom of the first page of the document the following appears under "WHAT THEY MAY SAY": "You will lose all your benefits and will have to start from zero." And under "REALITY" it is pointed out that this is not true and why. R. Exh. 6 was also received during this witness' testimony. The parties stipulated that it was distributed by the Union sometime between 1991 and 1994. This exhibit is titled "WHAT ADMINISTRATION AND SUPERVISORS CANNOT DO," and the last page of the document is a form to record what occurred if the person filling out the form believed that management or supervisors interfered with union organizing.

[40] C.P. Exh. 1 indicates that Heck worked on February 26.

and the upcoming vote.[41] Kleitz testified that when the nurses said they did not have any questions Polson said "Well, I sure would hate to lose all my benefits"; that she asked Polson what she meant; that Polson then said "Well I hate to lose everything I've gotten . . . if they vote the Union in then we lose all our benefits. We start from scratch"; that she then told Polson that was not true in that the employees do not start from scratch; and that Polson said that she had 3 or 4 weeks of vacation, sick leave and insurance and she did not want any of that to be "messed with." On cross-examination Kleitz testified that she was a vocal supporter of the Union during the organizing campaign; that she was one of the nurses on the organizing committee who signed a letter on NPO letterhead dated February 8 challenging William Brown, president of Audubon and the highest ranking official of Columbia Health Care Corporation on site at the time, to a debate (R. Exh. 7); that Polson said "I sure would hate to lose everything I've worked for"; and that when she asked Polson what she meant Polson replied, "[m]y vacation, my sick time, my benefits, insurance. I'd hate to start from scratch." Polson testified that at the time of the union campaign she was a nurse manager in the cardiac cath lab; that during the campaign she did speak to RNs concerning how benefits could be affected during the collective-bargaining process; that during the campaign she left her unit and spoke with nurses in ER; that she did not recall saying that she would hate to lose all of her benefits by voting for the Union while she was in the presence of Kleitz and she "would not have said something like that . . . and . . . that doesn't sound like a statement that I would have made"; and that she did not recall saying and she would not have said in the presence of Kleitz that negotiations regarding benefits would start at zero or start at scratch. On cross-examination Polson testified that she made rounds as a nurse manager one night in the ER. And on redirect Polson testified that prior to the union campaign nurse managers made night rounds because the 11 [p.m.] to 7 [a.m.] employees did not have access to the human resources office which was closed during those hours; and that she did not tell Kleitz in the ER that if the RNs voted the Union in that they would lose all of their benefits.

In February 1994, according to the testimony of Kleitz, she posted prounion literature on the bulletin boards in the ER department.[42] Kleitz testified that subsequently she saw Edith Harper take her, Kleitz', prounion literature off the bulletin board directly behind the nurses desk;[43] that subsequently she saw that the prounion literature (a "Fiction and Fact" flyer and pamphlets regarding staffing-to-nurse ratio) that she posted on the bulletin board in the nurses lounge had been taken down while all the antiunion literature remained on the board; that she went to Harper's office and asked her why she took the prounion literature down; that Harper initially denied taking the literature down but when Kleitz told her more than once that she saw her do it Harper finally admitted it; that Harper said that she did it because she did not want any more "union stuff" in the ER department; and that Harper did not deny that she left the NFN literature on the bulletin boards. On cross-examination Kleitz testified that Harper removed at least three pieces of prounion literature; and that her November affidavit to the Board indicates only that a letter was removed. Harper testified that she was a clinical coordinator in March 1994;[44] that she was paid hourly; that she did not attend nurse manager meetings during the organizing campaign before the March 1994 election vote; that she did not hand out hospital literature during the campaign; that she received campaign literature from the NPO; that she voted in the March 1994 union election; that it was her understanding that campaign literature could not be hung in the patient care area during the campaign but it could be posted in a nonpatient care area; that the only board in the emergency room which was in a nonpatient care area was in the staff lounge; that she considered the three boards near the desks to be in a patient care area because they can be seen by the patients or their families who come to the desks; that she never removed any literature during the campaign from the lounge board; that she did remove literature during the campaign from one of the other bulletin boards in the patient care area of the ER and she threw the literature out; that she did not remember what the literature was but she remembered that there was no NFN literature on that board; and that subsequently Kleitz discussed the matter with her. On cross-examination Harper testified that she became a clinical coordinator in the summer of 1993; that in the past each unit in the hospital had a nurse manager and at the time she testified herein there was no longer such a thing as a nurse manager but each unit had a clinical coordinator; that in her unit she does not have anything to do with the budget or discipline whereas the nurse managers were involved in the budget and discipline; that as a clinical coordinator she can recommend discipline; that she has recommended to the director that an employee be disciplined for absences and being tardy; that when she voted in the election her ballot was challenged by the Union; that no one told her that it was her job to enforce a rule prohibiting the posting of campaign literature in a patient care area; that she approves vacation requests for the day shift but usually no judgment has to be made regarding vacations and if there is a conflict, it is resolved on a seniority basis; that she signs off on the evaluations of employees by the charge nurse; and that at the beginning of the involved campaign she was on the NFN committee (C.P. Exh. 3), and she handed out literature one afternoon and that was the only involvement she had.[45] Harper testified that when she takes time off from work a charge nurse fills in for her.

Joann Anderson, Audubon's vice president of patient care services, testified that during the union campaign Audubon had one

[41] Present were Charge Nurse Linda Richardson, Alice Muench, and Bob Austell. Polsen was accompanied by another lady whom Kleitz did not know.

[42] Kleitz testified that there are three bulletin boards in the ER area; that all types of material are posted on these bulletin boards, including antiunion material of the nurses for nurses (NFN), kids' drawings, newspaper cartoons, and order forms for Girl Scout cookies.

[43] Kleitz testified that Harper issued "needs" lists which indicated where Respondent needed help during a 6- to 8-week period so that nurses could volunteer for extra shifts; that Harper assigns these extra shifts and she resolves any conflicts in assigning these extra shifts; that Harper susbsitutes for Nurse Manager Lynn Smith when the latter is absent; that Harper fields patient and family complaints; that in Smith's absence Harper calls nurse meetings and she presides at them; that when she calls in sick she speaks to Harper; that Harper handles switches in nurses schedules; and that Harper approves the nurses' vacation schedules.

[44] Harper testified that at the time of the involved union campaign she was the only clinical coordinator in the hospital; that her duties were different from a charge nurse in that she did a lot of things with the policies and procedures, she did daily time sheets for payroll, corrections, and putting in the employees' sick time or vacation time which the charge nurses did not do; that she overlooked the evaluations that the charge nurses did; and that she made sure that there was staffing on a weekly basis while the charge nurses "kind of look[ed] at it just on a daily basis."

[45] As noted above, she testified on direct that she did not hand out "hospital" literature during the campaign. RN Miriam Gravatte, who was the founder of NFN, testified that when Harper was at work she put any handouts that NFN had in the employees' mailboxes.

clinical coordinator, Edie Harper, who scheduled employees; and that Harper had no fiscal responsibility, she did not participate in nurse manager meetings, and she was paid hourly. On cross-examination Anderson testified that Harper was involved in disciplinary counseling and she formally evaluated employees as part of the merit raise system in January through March 1994; that the authority to issue suspensions and more severe disciplinary actions occurred while Harper was the only clinical coordinator; that Harper, as a clinical coordinator, has a higher pay scale then a regular staff RN; and that Harper's name appears on Charging Party's Exhibit 3 which is a one-page document titled "YOU ARE NOT ALONE, NURSES FOR NURSES .... OPPOSED TO UNION REPRESENTATION."

In February 1994, according to the testimony of Nancy McDonald, who is an RN at Audubon, Star Block, who assertedly was a nursing supervisor, had a conversation with her in the open-heart recovery room.[46] McDonald testified that Arlene Rice was present during this conversation; that they were discussing staffing; that earlier they had been discussing the shortage in staffing; that Block said that the shortage was NPO's fault; that Block said that she had talked to Vandewater when he was at the hospital and he said "that if the Union was voted in, he would sell the hospital, [a]nd . . . he had over a hundred hospitals and he would sell" and Block stated that Vandewater said that "staffing wasn't part of his . . . proposal [s]taffing wasn't negotiable"; that Block said that Vandewater "had one proposal, and one proposal only"; and that the conversation lasted for approximately 10 minutes. On cross-examination, McDonald testified that this conversation occurred during a weekend when Block was the house relief supervisor; that she complained to Block that they started the shift short of nurses; that Block said if the nurses worked extra there would not be a shortage in the staff; that she told Block that the nurses already worked extra and it didn't solve the problem; that they were experiencing some increase in patient flow that morning which caused a staffing problem; and that when Block said that Vandewater would sell the hospital if the Union was voted in she, McDonald, said that Audubon had been bought and sold before. Block testified that she recalled having a conversation with McDonald and Rice in late February 1994 concerning the upcoming election; that McDonald and Rice thought that they were shortstaffed and they indicated that the Union would help by putting staffing patterns in the contract as had been done in one of the hospitals out West; that she told them that she did not think that unions had any business in healthcare; that at the time of this conversation she was working as house relief supervisor; that she did not tell them that she had spoken with Vandewater when he toured the hospital; that she did not tell them that Vandewater would sell the hospital if the NPO won the election or that the hospital would have only one proposal during negotiations and staffing would not be part of it; that she did not tell them that Columbia had over 100 hospitals and would sell one if it was unionized but this topic may have come up in speculation; that she did not recall telling them that staffing was the fault of NPO; that she did not tell them that staffing would not be negotiable if the NPO won the election; that Dee Doyle asked her to sign an authorization card during the organizing drive; that in January through March 1994 she held two positions simultaneously, namely, nursing resource coordinator and assistant QA coordinator; that as nursing resource coordinator she was bed coordinator and every other weekend she was relief nursing supervisor; that as bed coordinator, relief nursing supervisor and assistant QA coordinator she was paid hourly; that as bed coordinator she did not supervise any nurses or other employees; that as assistant QA coordinator no employees reported to her and she did not direct employees in patient care; that she voted a challenged ballot in the 1994 union election; that as house relief supervisor she did not have authority to discipline nurses but rather she made the rounds on the nursing units, collected staffing and was troubleshooter; that during the 5 years that she served as nursing resource coordinator she never disciplined a nurse; that when she worked as house relief supervisor the charge nurse or the RN on the floor was responsible for patient care, she did not keep attendance records for employees, she did not handle any employee requests to come in late or leave early, she never wrote up an employee for an absence and she did not have the authority to determine whether discipline could be imposed as a result of an absence; and that as nursing resource coordinator she reported to Laura Wood, who was the assistant director of nursing over critical care and as assistant QA coordinator she reported to Robin Andari, who was the QA coordinator. On cross-examination Block testified that when she served as house supervisor on the weekend she was the highest ranking nurse in the hospital; that when she had the conversation with McDonald and Rice she, Block, was the only house supervisor on duty that evening; that the speculation as to whether the hospital might close might have come up during the conversation with McDonald and Rice but she could not recall; and that when she worked as relief nursing supervisor she considered herself a supervisor.

Anderson, on cross-examination testified that Charging Party's Exhibit 7 is an "AUTOMATED TIME AND ATTENDANCE FINAL BIWEEKLY ATTENDANCE DETAIL" for Mary Block; that the document is for Mary S. Block;[47] that the document indicates "DEPARTMENT 601 NURSING SUPER-VISOR"; that department 601 is where nursing supervision is housed; and that "POSITION:64C RN SUPV" on the form is an abbreviation for nursing supervisor. On redirect Anderson testified that Block would always be listed as an RN supervisor in the payroll system even during the time she was bed coordinator because that was the highest level that she would be in; and that Block was paid hourly.

Doyon testified that Kim Blair was one of the supervisory personnel at Audubon in January and February 1994; that Blair took care of staffing; that during this same period Star Block did basically the same thing as Blair and Block had written a letter to Nurse Manager Purviance voicing concerns about Doyon's competence as a charge nurse. Block testified that she did write a note to Doyon's nurse manager indicating that Doyon probably needed a little more orientation in the charge nurse role; and that the note was not a disciplinary letter. Anderson testified that between January and March 1994 Block worked primarily out of the nursing

[46] McDonald testified that at the time Block was a nursing supervisor during the 1 or 2 weekends each month that she worked and from Monday to Friday Block worked as a bed coordinator; that she worked with Block when she was a nursing supervisor over the weekends; that Block's duties as a nursing supervisor included determining the nursing needs of the hospital, booking beds for different areas of the hospital, assigning beds for transfer patients, transferring people to different areas of the hospital as needed, authorizing nurses to come in late or leave early, issuing occurrences or reprimands regarding absences; and that when Block served as the nursing supervisor she was the only supervisor present in her area of the hospital. On cross-examination McDonald testified that Block was known as the house relief supervisor when she worked on weekends; that Block could transfer nurses within the division that they worked or in critical care; and that designated charge nurses would take their instructions from the nursing supervisor.

[47] It covers the reporting period from 11/28 to 12/11/93.

office and she was responsible for tracking and developing policies and procedures for the nursing department; that the other part of Block's job was bed coordinator which involved making sure that patients were place in the proper department or unit for the care that they needed, she collected the staffing information for different units and every other weekend she covered house supervision; that Block was paid hourly and she did not attend nurse manager meetings; that Block, regarding participation in the disciplinary process, "participated at the level that other staff RNs would participate at, except when she was in the role of house supervisor on the weekends"; that Block would have input in the evaluation process only as weekend house supervisor; that as bed coordinator Block had authority to transfer employees but most of the time nurse managers were present and they performed this function; and that Block did not play a role in the hiring or rewarding of employees with salary increases. On cross-examination Anderson testified that as house supervisor every other weekend Block had the authority to participate in disciplining employees, she could engage in verbal counseling, she could issue written warnings which are placed in the employee's personnel file, and she had responsibility for formal written evaluations which impacted merit increases; that Blair, who was the bed coordinator person, is the day house supervisor as of June or July 1994; that Blair served as weekend house supervisor on the weekends that she worked; and that Block was the other weekend house supervisor.

In late February 1994, according to the testimony of Peggy Fields (formerly Smith), who is a staff RN at Audubon, Laura Wood, who at the time was assistant director to the critical care nursing units, and Earnestine Muth, who was the nurse manager of the intensive care unit, rolled a television to the nurses station in the cardiovascular unit and showed a video to her and the other employees who were present, including RN Kenny Doyon. Fields testified that after the video, which was about a strike, was over Wood said to Kenny Doyon in her presence "[t]his is the reason why . . . we should vote no to the union, because we *would* lose everything. We would start from ground zero. We would lose all of our benefits." (Emphasis added.) On cross-examination Fields testified that she was an active supporter of the Union; that she verbally campaigned with her fellow nurses on break time about joining the Union; and that in her April 6 affidavit to the Board it is indicated that Wood said "This is why it was important to vote no, because we *could* start from zero and lose all our benefits, so we should vote no." (Emphasis added.) Wood testified that she did discuss, during the campaign, with RNs, the collective-bargaining process, specifically how it relates to wages and benefits; and that she did not recall having a conversation with Kenny Doyon or Fields about collective bargaining during the organizing campaign.

Fields testified that in late February she needed a day off to go to her uncle's funeral; that she was unable to find an RN to work for her; that an LPN said she would trade working days so that Fields could attend the funeral; and that when she asked Nurse Manager Karen Purviance if there would be an exception to the rule regarding RNs being able to trade with other RNs, Purviance agreed stating "[i]sn't it nice that we can be so flexible now, but if the union got in, we wouldn't be able to be flexible." On cross-examination Fields testified that LPNs were not included in the unit that the Union was seeking to represent. Purviance testified that at the time in question here she was the nurse manager on CVU; that Fields was an open and obvious union supporter; that she told Fields that if the Union came into the hospital that flexibility could be altered or eliminated; and that she made this statement because it was her understanding of negotiating and bargaining that such policies would be looked at. On cross-examination Purviance testified that it was hospital policy that you could only trade days with someone of your same job classification; and that in the past, before Fields asked, she, Purviance, allowed RNs to trade with LPNs.

On February 28, according to the testimony of coronary care (CCU) RN Melinda Bagby, who has worked for over 15 years for Audubon, the nurse manager of her unit, George Roth, took down a letter she had posted on the bulletin board in the conference room in CCU and wadded it up. Bagby testified that the letter was a prounion letter of encouragement from the unionized nurses at the San Leandro, California hospital which Columbia HCA owned; that "everything" is posted on the bulletin board and she was never told that she had to have permission to post on the bulletin board; that at that time Roth did not remove the campaign literature of the NFN, the antiunion group; and that when the NFN posted a letter the next day Roth, who saw them go into the conference room where the bulletin board is located, did nothing.[48] Roth testified that it was his understanding during the union campaign that there could be posting on bulletin boards in nonpatient care areas; that the bulletin board in the break or conference room in CCU is considered in a nonpatient care area; that he posted prohospital campaign literature on that board; that the only material that he removed from the conference room bulletin board was defaced material which he had earlier put up; that he did not remove NPO literature from this board; that he did remove all campaign literature from patient care areas; and that he did not allow hospital or NFN literature to be posted in an area that was off limits to NPO literature. On cross-examination he testified that he attended meetings conducted by a consultant where he was instructed about the hospital's position regarding the Union; that he did the best he could to communicate the hospital's opposition to the Union to the employees in CCU; that it is common for him to crumple material when he throws it in a garbage can; and that the hospital did have campaign material in the staff elevator area which was used by nonstaff people notwithstanding the signs prohibiting this. Also Roth testified that when the management position in CCU was eliminated he was permitted to continue in that position until he bid and assumed his new position as clinical coordinator.

Sometime before the election (R. Exh. 39), "INFOR-MATION ABOUT YOUR RIGHTS AND THE UPCOMING ELECTION," was circulated by Audubon's management to the involved employees. The document specifies the time and place of the election and it specifies the "RIGHTS" of the involved employees and encourages them to vote.

Cook testified that on two occasions during the campaign she made rounds outside of her unit, namely on February 24 and 28; that this was the first time she made these types of rounds outside her unit within such a short period; that thereafter she made such rounds every 4 to 6 months; that she did not engage in this practice before the union campaign; and that from 1991 to 1994 she was never asked to make off-shift rounds outside her department and she was not aware of any other nurse managers engaging in this practice between 1991 and 1994. Laura Wood, who at the time was assistant director of nursing, testified that before the Union filed its petition for an election in January 1994, nurse managers made rounds outside of their units if another nurse manager was absent, and over holidays when supervisors would cover for each other and do rounds. On cross-examination Wood testified that before the

[48] Examples of NFN literature were received as C.P. Exhs. 2–5. Bagby testified that she received some NFN literature at home albeit she has an unlisted telephone number.

union campaign there was no schedule [of] rounds for the directors of nursing because there was a nurse manager in every unit; and that the eight directors of nursing were instituted in May 1994.

Barbara Sautel, an RN at Audubon, testified that before the election, sometime in January to March 1994, she was approached at the hospital by her manager, Carol Young, who suggested that she, Sautel, might be interested in going to a meeting of the NFN; that she did not go to the meeting and she was not disciplined; that Young said that the NFN wanted to try to resolve some of the conflicts in the hospital the right way and not the union way and she, Sautel, might learn something from going to the meeting; that during unit meetings during this period Young told RNs that with the union everyone would have to pay dues, your jobs will be reevaluated, you will lose benefits, benefits and everything will go back to zero, you will all start at zero regarding seniority and sick leave; that she did not hear the entire statement of Young; that RNs Anna Long and Glenda Brown were present during Young's statements; and that Young said that if the Union gets in you are likely to lose benefits. Young testified that during the period January though March 1994 she was the manager of diagnostic cardiology; that in this position she supervised three nurses, Long, Brown, and Sautel; that she recalled one discussions with these three nurses regarding benefits; that she told the three RNs that benefits would be pretty much frozen and then negotiated and they could end up with more, the same or less; that during this discussion she did not mention zero benefits and she did not say the if the Union won the election, the nurses would lose benefits; that she did not recall discussing what would happen to jobs at the hospital if the Union won the election; that it is possible that she said that jobs could be changed if the Union won the election but she did not recall such a discussion; that she did not say that negotiations would start at zero; that after the discussion Sautel followed her into the hall and indicated that she, Sautel, did not necessarily have the same views as Long and Brown; that Sautel then indicated that she heard that there were some nurses who were organizing against the Union and she told Sautel who she could contact if she was interested, namely Gravatte; and that she did not tell Sautel to go to a NFN meeting, she did not encourage Sautel to go and she did not tell Sautel about where a NFN meeting was to be held. On cross examination Young testified that she explained to Sautel that Gravatte was a nurse on pediatrics; and that she had heard that Gravatte was involved in NFN but she could not remember who told her.

On March 3 and 4 an election was held pursuant to the provisions of a stipulated election agreement. Bagby, who was an election observer for the Union, testified that according to the Stipulated Election Agreement registered nurse applicants (RNA) were included in the unit; that while she was observer two nurse applicants were challenged by Audubon, Tiffany Fenwick, and Sandra Welch; that she made a formal complaint over this challenge with the agents present; and that later in the day Respondent challenged two other RNAs, Michael Ohlenmacher and Ms Jones, both of whom had worn prounion pins in the hospital. On cross-examination Bagby testified that she challenged Kathy Jordan, who was a NFN supporter; and that when the agent from the National Labor Relations Board (Board) asked Respondent why it challenged the two RNAs they were told it was because they did not have RN licenses. Subsequently Bagby testified that she was shocked that Audubon challenged RNAs and she went to the union office and told the people there what was happening; and that the union representatives gathered a list of RNAs and were considering challenging all of them so that they would all be classified together, it would be fair and afterwards they would all have to be dealt with together. Riley testified that Audubon asked that registered nurse applicants (RNAs) be included in the unit; that Audubon challenged two RNAs at the election because they had applied for position at other hospitals and Audubon was not sure that they were going to continue working for Audubon; that NPO challenged 14 or 16 RNAs; that it was never announced by Audubon at a preelection conference that it would be challenging certain nurses; and that Audubon never informed nurses that mobile nurse votes would only be counted if they voted yes.

During the campaign a number of union authorization cards were signed. They are covered in Appendix A hereto.

Respondent's Exhibit 31 is titled "AUDUBON . . . MARKET WAGE ADJUSTMENT SUMMARY" and it is dated "3/14/94." Riley testified that the document which is reflective of the final market adjustment was worked up by Pugh pursuant to her directions; that the employees actually received the increase in their paychecks in the latter part of March 1994; that it took about a month after it was announced to make it effective because Audubon has over 2000 employees and there were a lot of entries to be made and a document had to be placed into each employee's personnel file; that nothing was done for this market wage adjustment than had been done in the past; that Pugh was told to do the RN statements first because they were the largest category of statements to be done and normally her people work on the largest category first; that notification to employees about their market adjustment was done differently than in the past in that management received training and they were given some documents to make available to the employees about the adjustment;[49] that the literature was made available because the employees became confused regarding what they would receive and in 1991 when a market adjustment was given the human resource department had to answer a lot of questions on an individual basis; and that this market adjustment would have been given at the same time if there had not been a union petition, campaign and election and if the Columbia HCA merger had not occurred.

Anderson testified that the vacancy rate for the RN job classification in March 1994 remained at about 20 percent.

By letter dated May 26, 1994, the Regional Director for Region 9 of the Board advised NPO with respect to Cases 9–CA–31725–1, –2, –3, and –4 that further proceedings were not warranted except with respect to some 8(a)(1) allegations in Case 9–CA–31725–1. The letter also contains the following:

> Finally, in view of the dismissal of these charges, as well as the size of the unit, it cannot be concluded that a free and fair election would be impossible especially after the imposition of the Board's traditional remedies in the event the Union's objections are meritorious. Under all these circumstances, a bargaining order, pursuant to Section 8(a)(1) and (5) of the Act, as alleged in Case 9–CA–31725–4 is not warranted. *Philips Industries*, 295 NLRB 717 [(1989)].[50]

Respondent's Exhibit 63, a one-sheet document dated 7/6/94 and titled "NURSING COST CONTAINMENT MEASURES," was sponsored by Anderson. She testified that the document was used by administration to look at cost containment measures, either tracking them or looking at what could be done; that the document calls for the elimination of three positions, namely the lactation consultant, the accreditation manager, and the QA coordinator; and

[49] GC Exhs. 4(a), (b), and (c). Riley testified that R. Exh. 32 was included in the packet.

[50] As pointed out by counsel for the Charging Party at the hearing, the Regional Director was overruled on appeal.

that these three positions were later eliminated because they were not critical to the functioning of the facility.

On August 9 Joanne Sandusky, who had been a registered nurse for 30 years and who was hired at Audubon in 1975, was paged by her immediate supervisor, Joan Wempe, at about 12:45 p.m. and was told that they were to meet at 1:30 p.m. Sandusky testified that at 1:30 p.m. she went to Wempe's office and they went to human resources and met with Marcia Johnson; that Johnson said that Sandusky's position was being eliminated and she handed Sandusky a pay and severance check; that Johnson told Sandusky that she had to start packing immediately, get out as soon as possible, Wempe would watch her pack and she would be escorted out of the hospital; that she asked them at that time if there were any positions in neonatal or maternal units or discharge planning available and that Johnson and Wempe responded that they did not think so but she could look at the board where jobs are posted, but maybe she would not be qualified for any of them; that Johnson said that she was terminated; that Johnson asked her to sign her personnel action request (PAR) which indicated that she was terminated;[51] that Wempe escorted her upstairs to her office and when she said that she did not need help Wempe said that she had to stay with her the whole time; that it took about 2 hours to pack her belongings; that Wempe then called for a security guard and she called for a dolly to carry all of the boxes; that there were 20 boxes and the guard, who escorted Sandusky, along with Wempe, to the door could not load all of them in Sandusky's car; that she had to return to the hospital to get the remaining boxes; and that when she returned to the hospital she was not allowed to go into the hospital and Wempe and the guard met her at the door. In 1984 Sandusky's position as maternal child patient education coordinator was eliminated but at that time she was immediately assumed into the intensive care nursery as a staff nurse. In 1994 Sandusky became very active in the union organizing campaign, passing out leaflets, wearing union buttons, having her picture on a big billboard in Louisville,[52] appearing in a video with about 10 other nurses and speaking on the video about seniority and job security, passing out authorization cards and signing requests to debate Brown (R. Exh. 7) and NFN (GC Exh. 294). The video was mailed to all the employees in the hospital.

Wempe testified that as director of maternal child nursing she supervised Sandusky when she was a lactation consultant; that the position of lactation consultant was eliminated in August 1994; that subsequently staff nurses performed the services previously performed by the lactation specialist that she and Joann Anderson made the decision to eliminate the position of lactation consultant as part of a cost containment package; that she and Johnson, who works in the human resources department, informed Sandusky that her position had been eliminated because of downsizing and cost containment; that at the time she told Sandusky that she could apply for any position that was open in the hospital that she felt qualified for; that she informed Sandusky that there were several openings in the intensive care nursery and she told Sandusky where she could find those postings; that when Sandusky asked she told Sandusky that she, Wempe, did not just have another position to give her; that it was preferred that Sandusky move her belongings out of the hospital that day; that she believed that the people whose jobs were also eliminated at that time also moved out on that same day; and that she asked security to help escort Sandusky out of the building because they needed someone to help them with the boxes and she thought that "it would not embarrass her [Sandusky] uh, maybe not, uh, so much, umm, to have someone help us out with them." On cross-examination Wempe testified that she did not have personal knowledge of when the other people whose jobs were eliminated at that time moved their belongings out; that the security guards wear uniforms and their primary responsibility is the security of the facility; that if she used maintenance for Sandusky's removal she, Wempe, would have had to ask their supervisor for that;[53] that she was trying to keep the embarrassment down for Sandusky by not involving other staff members of the facility; that the primary concern when she selected the security guard was Sandusky's embarrassment; that the cost containment package as it related to Sandusky's termination had nothing to do with the patient census; that other cost containment measures which were implemented at the time of the elimination of Sandusky's position was the decrease of some staff members hours to 37.5 from 40;[54] that Sandusky was the only RN in her, Wempe's, department whose position was eliminated at that time; and that the jobs that went from 40 hours to 37.5 hours involved patient care attendants and unit secretaries. On redirect Wempe testified that she had never been involved in a situation before where security had been asked to assist management. Subsequently Wempe testified that Sandusky did not receive any advance notice that her job was going to be eliminated; that Sandusky refused to sign her personnel action request which indicated that her position was eliminated; and that she could not remember on what basis she understood that the individuals whose positions were eliminated at the same time as Sandusky's left the same day that they were advised.

On August 10 Sandusky filed a grievance regarding her August 9 termination (GC Exh. 301). This was not the first grievance that Sandusky had filed with Audubon. On April 13, 1993, she filed a grievance regarding her evaluation and the alleged unprofessional behavior of her nurse manager (GC Exh. 295). As set forth in the grievance resolution. the evaluation was set aside and there was a written apology (GC Exh. 296). In June 1993, Sandusky filed a grievance regarding her evaluation and the actions of the same nurse manager, Donna Cook.[55] When Sandusky discussed this grievance with Riley the latter asked Sandusky if she knew anything about a petition that someone had left on her desk that morning (GC Exh. 298). The petition is signed by approximately 120 individuals.[56] It reads as follows:

> We have signed below to express our concern for Joanne Sandusky, RN, Family Support Specialist, in the Intensive

[51] GC Exh. 300, which has a checkmark in the termination box next to "Position Eliminated" and which was signed by Johnson with a date next to her signature of "8–4–94."

[52] GC Exh. 293 is a picture of the billboard. Also appearing on the billboard were Patty Clark, Shy Rice, Gloria Gant, Donna Ingram, Ann Long, Lonnie Holthouser, Ann Hurst, Vivian Kleitz, Lisa Cain, Jeff Tallant, Dee Doyle, Maggie Kelly, Angela Pate, Melinda Bagby, Vivian Zollman, Terry Schmidt, and Betty Schmidt. Sandusky testified that all of the other people on the billboard were still working at Audubon when she left on August 9. Subsequently, she testified that the hospital enlarged a photograph of the billboard and placed it on easels in front of all the elevators; that the following statement was also placed on the easels: "Do you really want these people in charge of your work or environment."

[53] Wempe testified that normally maintenance moves furniture or equipment in the hospital.

[54] Other measures were specified but apparently they occurred at some point in time other than when Sandusky's position was eliminated.

[55] Additionally, Sandusky filed a grievance regarding Cook and management team meetings.

[56] The copy Riley had was not the final copy and did not have as many signatures as the one received here.

> Care and Newborn Nurseries. It is only through experienced and caring employees such as Joanne that our patients and their families see the human face of our hospital.
>
> After 18 years of service, Joanne should be valued for her experience. People should not be tossed aside like used supplies. We urge you to act to see that justice is done for Joanne.

Sandusky testified that Riley, who is usually quite soft spoken, raised her voice a lot and acted upset in referring to the petition, and she said that Sandusky should not be talking to anyone else about her grievance.[57] As set forth in the grievance resolution (GC Exh. 299), Sandusky received merit increases, became part of the nutritional support team in the area of lactation management, retained her grade and salary, and it was decided that she would report to the assistant director of nursing in charge of the nutritional support team. The resolution also called for Sandusky to develop a job title and description in the area of lactation management. At the time of the resolution, Sandusky asked Riley if the position was approved on the corporate level, whether it was a stable position and whether it was subject to elimination. Riley responded that Audubon did not have to get approval on the corporate level for such positions anymore, that the hospitals has more autonomy in developing such positions, that the doctors had asked for and really wanted this position, and it was something that was needed in the hospital. In March 1994, Sandusky became full-time lactation consultant. As described above, 5 months later the position was eliminated.

By letter dated April 19, 1994, Respondent's counsel submitted a statement of position to the Board and supporting documentation in response to objections and unfair labor practice charges (GC Exh. 451).

Anderson testified that annualized about $1 million was saved in the May 1994 reorganization of nursing management; and that the cost of the across-the-board wage increase announced in February 1994 could have been a little over $1 million considering the fact that it was given not only to RNs but also to a lot of other categories of employees; and that she could not estimate what proportion of the cost of the wage increase was attributable to the wage increase for RNs.

By letter dated August 29 (GC Exh. 302), from Riley to Sandusky, the former advised the latter that she was, per Sandusky's request, providing her with a written summary of their August 26 meeting. The letter reads, in part, as follows:

> I do want to assure you that Audubon . . . does not discriminate against or illegally terminate employees. Unfortunately, the position of Lactation Clinician, which you held, was eliminated.
>
> . . . .
>
> We also discussed the fact that the title change and job description change for your position was at your request and mutually agreed upon as a resolution to your grievance signed November 29, 1993.[58]

Riley testified that when it was decided that Sandusky would become the lactation consultant Sandusky asked whether corporate had to approve the position; that with respect to the petition that Sandusky's coworkers signed, she, Riley, did not tell Sandusky that she could not speak to other nurses concerning her grievance but rather she assured Sandusky that the confidentiality of the grievance process had not been breached by Riley's office; that Audubon is a 480 bed hospital and if the census (number of patients occupying those beds) drops below 300 Audubon considers it a plummet in census; that in the fall of 1993 the census was in the 200 range and cost containment measures were discussed but nothing was done at that time; that in the first quarter of 1994 the census came back into the 300 range; that it was decided by the hospital to "flatten" its management ranks, eliminate 13 nurse manager positions, create nurse director positions, and have clinical coordinators on the first shift; that the nurse managers and anyone in house who felt they were qualified could bid for the director and clinical coordinator positions; that some of the nurse managers left Audubon and they were given a severance package; that other cost containment measures included ending the weekend shift differential, closing Audubon's X-ray lab in its physicians office building, reducing overtime, and reducing some of the 40 hour positions to 37.5 hours; that the administrative team which was working on the cost containment measures identified three positions as noncritical and nonessential, namely the manager of accreditation, a quality assurance coordinator and the lactation specialist or consultant; that the decision to eliminate the lactation consultant position was made by Anderson, the vice president of patient services, and Wempe, the manager of that area and confirmed by the administrative team; that Sandusky's position was not eliminated because of her union activity; that the quality assurance coordinator and the hospital accreditation manager received 2 and 4 weeks of severance pay, respectively; that Sandusky received 4 weeks of severance pay; that on August 9 Columbia's policy regarding noncritical and nonessential positions which were eliminated was that there were no recall rights but if the individual is rehired at any Columbia HCA hospital within 90 days, they retain their seniority; that vacancies in registered nurse positions are filled in two ways, namely, external candidates fill out an application with the hospital and employees of the hospital or any Columbia HCA facility self nominate or nominate themselves for the position; that Respondent's Exhibit 42 is a list of positions available at Audubon on August 5, which includes a number of RN positions; that it was not her intent, even in a contract situation regarding the Catch-the-Spirit course to pay Sandusky less than minimum wage; that Sandusky's August 10 letter was taken through the grievance process;[59] that when she met with Sandusky she told Sandusky that there was nothing unjust, discriminatory, or illegal about her termination;[60] that with respect to

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[57] RN Angela Pate testified that she was called into the office of Ken Morrow, the director of surgical services, and asked if she had collected signatures on the petition for Sandusky and if she collected them on company time. Pate responded in the affirmative to both questions. Morrow then told her that he did not want this being done on company time.

[58] Riley's letter also refers to "layoff procedures" and to the fact that Riley found it unfortunate that Sandusky declined to continue the breastfeeding series "Catch the Spirit." Regarding the latter, Sandusky testified that she was offered $25 for a 3-hour course each month but she explained to Riley that there was also development time involved. When all the time involved is considered, Respondent's offer amounted, according to the testimony of Sandusky, 84 cents an hour. With respect to the former, Sandusky testified that Riley told her that she was on layoff status which was contrary to what Johnson said on August 9.

[59] By letter dated November 15 (R. Exh. 44), Steve Tullman, Audubon's vice president and chief operating officer, advised Sandusky, after meeting with her, that, among other things, the elimination of the involved position was not an act of discrimination and she was on layoff status which gave her recall rights for 6 months.

[60] In her grievance Sandusky alleged the following:

> In addition, the creation of my job prior to the union election and the elimination of my new job following the election vio-

severance pay Sandusky was given 2 weeks more than any other exempt status position was given; that she told Sandusky during this meeting that she could apply for any position in the hospital for which she was qualified and Riley would look into putting Sandusky into a recall situation;[61] that she had a number of telephone conversations with Sandusky about finding employment following her job elimination; that one position which was considered and for which she interviewed was in the intensive care nursery but that position was taken off the posting as part of a cost containment measure; and that her last contact with Sandusky was when she told Sandusky that aforementioned position was taken off posting in the beginning of November 1994. On cross-examination Riley testified that, regarding the lactation specialist position, she told Sandusky, in response to her question, that Audubon could create positions like that at the hospital and it had been approved; that when the hospital eliminated the 13 nurse positions it created 8 directors positions and one clinical coordinator position for each of the approximately 20 units that had a charge nurse on the first shift; that 6 of the 15 to 20 nurse managers terminated their employment at Audubon at the time; that about 2 months before the terminations the plan was explained to the nurse managers and they were told of their options, including staff nurse if they did not want to pursue a director or clinical coordinator position; that one of the nurse managers who had 26 years of service received 6 months severance and the next senior who had 10 years received 8 or 10 weeks severance; that none of the nurse managers received a termination notice until they had decided whether to exercise their options; that she never told an employee that they were not allowed to discuss their grievance with others outside management; that when an employee other than the grievant expresses an opinion in writing to the administrator about the grievance, it is her personal policy to assure the grievant that no one in the human relations office breached the confidentiality of the grievance procedure; that the hospital accreditation manager had been with the hospital for 2 years when the position was eliminated, the quality assurance coordinator had been with the hospital for a couple of years when that position was eliminated, and neither one administered direct patient care and neither was an RN; that the census normally goes up and down and it is sometimes related to the season of the year; that the elimination of the position of lactation specialist was due to low census and the fact that the position was noncritical and nonessential; that the administrative team consists of the CEO and those in management on the vice president level; and that she did not inform Sandusky in April 1995 when the intensive care nursing position was reopened. On redirect Riley testified that Sandusky never contacted her regarding the reposting of the intensive care nursery position; and that when it was earlier eliminated from posting several other positions were also eliminated from posting.

In late August, Pugh attended a meeting in the human resources department with Riley, Donna Hilbert, who is the assistant director of human resources, and Johnson, who is the associate director of human resources. Pugh testified that either Riley or Johnson said that there would be an "objection" over the termination of Joann Sandusky; that he then asked why she was not at least allowed to apply for another position "just like everyone else is allowed to do"; that the others present did not respond to his question; and that in prior meetings with Riley she indicated that Sandusky was part of the Union and a chronic complainer and she always whined. Pugh testified that he voluntarily left Audubon after nursing management was reorganized, he was removed from the incentive compensation list, the amount of work he was assigned increased in quantity but decreased in importance, and he was spoken to regarding taking his daughter to an emergency doctor's appointment, which is covered under Audubon's dependent care benefit, while other people in his department went to "Cainland" on company time. Pugh was denied a requested severance package. He then filed an Equal Employment Opportunity Commission (EEOC) complaint.

On September 1 Sandusky applied for a staff nurse position in the intensive care nursery at Audubon. Wempe and Charlotte Frieberger, the clinical coordinator in the intensive care nursery, subsequently interviewed her. Sandusky never heard anything further about the position. Wempe testified that she interviewed Sandusky for this position; that she did not fill the position at the time because the census had declined from an average daily census of 14 to 8 in the intensive care nursery; and that several positions in the intensive care nursery were removed at that time from the posting. On cross-examination Wempe testified that the average daily census for the month of September 1994 in the intensive care nursery was 12, it was 12 in August and the average for all of 1994 was 12 to 14; and that the average daily census for this unit was 8 in November, 10 in December, 16 in January 1995, 12 to 14 in February 1995, 12 to 14 in March 1995, and about 12 to 14 in April 1995.

By letter dated September 7 (GC Exh. 303), Sandusky advised Joann Anderson, the vice president for patient care, that she was appealing her grievance to the second step "as is . . . [her] right under the hospital's grievance policy."

By letter dated October 6 (GC Exh. 304), Anderson, who referred to her meeting with Sandusky on September 28, advised Sandusky to continue her discussions with Wempe concerning a staff RN position. Anderson ended the letter with "I can tell you are going through a rough time right now, But I feel you will succeed in the end."

By letter dated October 13 (GC Exh. 305), Suburban Medical Center, which is also owned by Columbia HCA, advised Sandusky, with respect to her application for a part-time Special Care Nursery RN position, that "[a]lthough your qualifications and experience are commendable we have decided to pursue other candidates that better suit our needs at this time." Sandusky was never interviewed for this position.

With respect to the Sandusky matter, Anderson testified that Sandusky's position was eliminated as a part of the cost containment, reduction in force measure and not because of her activity on behalf of the NPO; that in the fall of 1993 the administration decided that Audubon had to reduce its costs as much as it could with as little impact on direct patient care givers as possible; that the accreditation manager and the QA coordinator left the same day they were told; that based on her investigation she determined that Wempe and Johnson were not rude or demoralizing and that was definitely not their intent; and that Sandusky was treated differently in that she was placed on layoff status while no one else was and she received more weeks of severance than what would normally be given to someone in a nonmanagement position. On cross-examination, Anderson testified that Sandusky's performance was not a factor in deciding to eliminate her position or how to treat her once the position was eliminated; that in the redeployment of registered nurses in February 1995, those nurses who were effected were told about what was happening to the jobs that they were in and they were given a list of other jobs that they could bid on; that

lated my rights and those of all employees under Section 7 of the National Labor Relations Act.

[61] Riley pointed out that the quality assurance coordinator did not receive recall rights.

while Sandusky indicated to Anderson that she, Sandusky, evaluated two to three patients a day, the lactation consultant who was available to be called in if needed has not been called in since Sandusky's position was eliminated; and that she did not know of anyone else who was escorted by security.

In late 1994, according to the testimony of RN Patricia Clark, a long-term disability benefit plan was made available to Audubon employees to go into effect in January 1995. Prior to this the RNs did not have long-term disability insurance available to them.

By letter dated December 1, 1994 (R. Exh. 16), the Acting Regional Director for Region 9 of the Board advised the Union regarding Case 9–CA–32276 that there was insufficient evidence of a violation and he declined to issue a complaint.

The General Counsel and Respondent stipulated that there was no long-term disability plan effective until January 1995 as to hourly employees. It was also stipulated that after the employees were notified of the long-term disability plan in February 1994 there was no formal written communication with them about the plan but in the summer to late fall 1994 the employees were notified that open enrollment was going to occur in the fall.

On February 6, 1995, Anna Long, who is a staff RN at Audubon, was told by Charlie Mayer and her supervisor Carol Young that her, Long's, job was eliminated. Long testified that this conversation occurred in Young's office; that she was told that as part of the restructuring, positions were being eliminated; that according to seniority she was one of the first they were speaking to and she had 20 minutes to make a pick from the list and then they would go to the next person in seniority and offer them a position; and that the list consisted of jobs from University, Caretenders, and she thought Suburban. On cross-examination Long testified that she was a "big supporter" of the Union; and that her picture and her statement in support of the Union appears in "FACES OF NPO" (GC Exh. 13(A)). Riley testified that she was in charge of deciding how the Long situation would be handled; and that Long and the others effected in that situation were given the opportunity to select one of the open positions in the hospital at the time, if there was a like fit, before they were served with a termination notice. On redirect Riley testified that Long was an open union supporter whose picture appeared in "Faces" and on the above-described billboard.

In April 1995 the position for which Sandusky was interviewed in the intensive care nursery, which position was temporarily removed from posting, was filled. Respondent did not contact Sandusky when it decided to fill the position. As noted above, Riley testified that she did not inform Sandusky in April 1995 when the intensive care nursing position was reopened. Wempe testified that while Sandusky did not get this position there were several other people who applied for the position when Sandusky applied and they also did not receive the job. On cross-examination Wempe testified that none of the other applicants for this position had 19 years of seniority with the hospital as did Sandusky; and that she did not telephone Sandusky about the fact that this position was reopened. Both Riley and Wempe testified that Sandusky did not contact them when the job was reopened.

Respondent's Exhibit 18 is titled "RNs on Staff" at Audubon and it is dated "9/27/1995." Riley conceded that the list was in error in that it includes Sandusky when she should have been taken out of the system when her layoff status period ended in mid-March 1995; that contrary to the list, Sandusky was never a clinical coordinator; and that there possibly could be other errors in this document.

With respect to the duties of RNs, Joann Anderson, who has been vice president of patient care at Audubon since January 1994, testified that in January 1994 there were about 650 RNs at Audubon; that RNs are responsible for overseeing the care that is being delivered to the patient population that they are working with; that RNs are responsible for assessing, developing a plan of care for the patients that they are caring for, and assuring that plan of care is carried out on a regular basis; that depending on the volume of patients there can be an exchange of staff on a day-to-day or shift-to-shift basis; that there is a legal requirement that an RN oversees the care being delivered to the patients; that the State requires that an RN be the one directing and supervising the care being delivered to patients; that the patient care delivery model at Audubon is primarily an RN-driven model; that when Audubon had nurse managers they were responsible for individual nursing units with respect to issues relating to fiscal responsibility, program development, personnel management, budget, equipment, and tracking and trending of occurrence reports; that nurse managers rarely engaged in direct patient care; that since March 1994 the changes in the function of the clinical coordinator include being utilized across the facility, their role has been expanded so that on most units they have 24-hour responsibility as well as shift responsibility for the day shift, they perform some clinical care, they are involved in equipment and supply issues, they are learning the financial side of the business and they are involved in disciplinary actions, performance evaluations and scheduling; that some RNs perform their duties without the assistance of anyone, namely those who work in the clinical research department, the heart institute, the quality management department, case managers, discharge planners, the education department and the endoscopy department; that specified individuals on Respondent's list of RNs (GC Exh. 2) would not be assisted in their duties by any other licensed or nonlicensed personnel; that Respondent's Exhibits 46 through 50 are the job descriptions in January 1994 for the different categories within the nursing department;[62] that these job descriptions are still in effect; that RNs are responsible for assessing the condition of a patient in determining and updating a patient care plan; that in a medical emergency situation if a physician is not on hand, the RN is the one responsible for handling the situation and the RN could direct lesser skilled employees: that RNs have the authority to make a determination based on patient needs and established staffing guidelines on how many care givers are needed in a unit; that the charge nurse makes patient assignments at the beginning of the shift or on the previous shift or in the absence of a charge nurse the RN can make patient assignments; that the charge nurse generally at the beginning of the shift assigns breaks but the RN can, if the need arises, make

[62] Respectively they include registered nurse, licensed practical nurse, patient care attendant, clinical nurse specialist/nurse supervisor, and designated charge nurse. All but the clinical nurse specialist has "JOB DESCRIPTION–NON MANAGEMENT" at the top of the first page. The clinical nurse specialist has "JOB DESCRIPTION–MANAGEMENT" at the top of the first page. The identification portion of the first page of the job description for the RNs specifies, in part, as follows:

Supervised by	Nurse Manager
Supervises directly:	LPN's, PCA's, UC's, Techs, ESA's
Supervises indirectly:	Student Nurses

And under "ESSENTIAL DUTIES" on the first page of this job description it is specified "2. Supervises new graduates, LPN's and nonlicensed nursing staff." Anderson testified that the expectation of an RN supervising the category of employees described above relates specifically to the patient population that they are dealing with; and that there may be tasks that are delegated to other licensed personnel or unlicensed personnel, according to what the patient needs are, what was determined by the RN in the assessment.

changes within that schedule of break times; that the formal evaluation process of LPNs and PCAs is generally performed by the clinical coordinators or the charge nurse but the RN can have input in the process; that with respect to occurrences, the RNs could do the verbal counseling but they could not assign points; and that responsibilities of the RNs and the designated charge nurses differ in that the latter is responsible for doing the patient assignments on a daily basis, they do some tracking and trending of attendance records, they have additional Joint Commission requirements, they maintain processes and systems that cover the entire functioning within a given shift on a given unit, they problem solve, they work with physicians in terms of additional orders, they engage in direct patient care, they are involved in the formal disciplinary process in terms of developing work plans. On cross-examination Anderson testified that staffing guidelines for a particular unit are recommended by the directors of those areas, approved by her and distributed to the unit on a quarterly basis; that employees who are not needed on a particular day (budgeted out) are chosen on a rotational basis by their classification; that an RN would not need approval from the housing supervisor to keep an RN even though the guidelines call for an LPN; that the individual units decide whether they are overstaffed or understaffed but the housing supervisor is the central repository for this information and if there is a greater need than availability the housing supervisor decides which unit has the greatest need and the available person would be placed in that unit; that an RN can send someone home without first contacting the housing supervisor or the central office; that RNs receive computer generated physicians' orders for the patients and this is used for medical care; that an RN cannot refuse to allow another RN or a LPN or PCA to take a scheduled break but the RN can delay the time of the break; that staff RNs do not have access to personnel files of other RNs, or LPNs or PCAs because "[p]ersonnel files are confidential, and are held at a level that we would not release them to just anybody"; that while the staff RN cannot decide how many disciplinary points are warranted in an given situation, the staff RN can make a recommendation which is taken into consideration at all levels of the disciplinary process; that an RN can suspend another nurse of PCA and while the RN has to inform management the RN does not need the prior approval of the house supervisor or a clinical coordinator; that there are guidelines with respect to what conduct warrants immediate suspension and if the conduct did not fall within the parameters of the guidelines Anderson did not believe that the RN could send another RN or employee home; that while it is not required that each unit have a RN for each shift, there has to be an RN in the hospital for each shift and that RN could be a clinical coordinator or a nurse manager; that staff nurses fill in for designated charge nurses when the latter are off; that on the day shift the clinical coordinators make the patient assignments on days that they are doing clinical care, which is about 80 percent of the time; that in the evening and night shifts there are designated charge nurses and house supervisors; that the house supervisors, all of whom have RN degrees, are in lieu of administration; that if someone on the unit has to go home for the shift that determination would be made by the designated charge nurse or the clinical coordinator during the day shift; that the house supervisor is the one who knows which units are short and which units have an excess of nurses; and that the medical orders are put in a standardized form and there is also a nursing care plan which represents the RN's determination of what actions need to be taken to provide nursing care.

Stephanie Ohlemacher, who is a RN at Audubon, testified that she works in surgery; that she has no authority to discipline employees; that she does not hire or fire; that she has drafted an occurrence or a problem sheet regarding other people on her unit who she believed put a patient in a dangerous condition more than once and she gave the sheet to her supervisor; that she has no idea what happened to the involved employee but the employee still works at Audubon; that you do not have to be an RN to fill out these sheets; that for about 2 years up to about 2 weeks before she testified on December 5, 1995, she did the scheduling for the employees in her unit; that she did the 6-week schedule and she does not do the daily scheduling; that days for vacation are requested on a first-come-first-serve basis and most of the time all of them are granted; that the secretary, who is not an RN, of her prior supervisor was doing the scheduling when she, Ohlemacher, testified; that the guideline is that the scheduler is supposed to be as fair as possible; and that the scheduler before the scheduler she took over from was a supervisor.

Cook testified that nurse managers have the authority to assign mandatory overtime and charge nurses can assign overtime in collaboration with the nursing supervisor.

Patricia Clark testified that she has worked the last 18 years for Audubon and its predecessor, St. Joseph's; that she was a designated charge nurse from 1986 to 1990; that as charge nurse she did not decide the duties of patient care attendants (PCAs) since they have a job description; that LPNs do almost everything that an RN does, except start blood, do any push I.V. drugs, vein medications, and I.V. bags, initial assessments on patients and care plans; that General Counsel's Exhibit 453 is a current assignment sheet of the type she used when she was a charge nurse; that she usually obtained a census and made out the assignment sheet according to room numbers, dividing the assignments up according to how many nurses were there, including herself; that as charge nurse she had no say in staffing patterns; that on the assignment sheet she filled out when people took breaks but usually she asked the employees if they had a preference and if possible she let the employees work their break times out among themselves; that she did not have to instruct the PCAs to take vital signs at the beginning of the shift or to pass trays later; that the only time that she knew about when a PCA had to delay taking a break was when there was an emergency; that as a charge nurse she never filled out an evaluation of another employee; that as a staff nurse she never received an evaluation from a charge nurse; that staff nurses were evaluated by nurse managers and later by clinical coordinators; that as a charge nurse she might have been asked if there was a specific problem with a particular nurse but she had never been asked what rating an employee should get on their evaluation; that as charge nurse she was never told that she had the authority to discipline an employee and she never disciplined an employee; that when she was designated charge nurse she had a problem with an employee and she told the nurse manager who asked her to write down what happened; that in that instance she wrote out just what happened and did not make nor was she asked for any recommendation as to what should be done; that as a staff nurse she has never given any sort of discipline and she has never received any discipline from another staff nurse; that neither staff nurses nor charge nurses have access to the written/verbal forms; that in 1994 when designated charge nurses were not working a staff nurse would work as charge nurse; that there is a patient plan of care which is inputed into the computer by the unit secretary from doctor's orders and a nursing care plan which is different than the former; and that the nursing care plan is a nursing diagnosis which is also inputed into the computer. On cross-examination Clark testified that she was president of NPO; that under the Kentucky Board of Nursing laws licensed

practical nurses (LPNs) care for the ill, injured, or infirm under the direct supervision of a registered nurse; that by law a part of her registered nursing practice includes the supervision and delegation to other personnel in the performance of nursing care; that in making assignments as a charge nurse she did take into account the acuity of a particular patient; that the RN has to work up the initial nursing care plan based on the RN's diagnosis and update it daily; that an RN could ask a PCA to take vital signs more frequently then at the beginning of the shift or check on the input and output more often; that as charge nurse she has asked for more staff based on the acuity of the patients on her unit and once or twice she received the additional help; that a charge nurse does not decide whether nurses take budget days; and that after the initial assessment LPNs can assess the patient. On redirect Clark testified that if she enters in the nursing care plan that a patient's vital signs should be taken every 4 hours she does not indicate who should do it; that she did not have the authority to discipline RNs or LPNs while she was a charge nurse and now when she is on staff; that staffing patterns are posted on each floor; that the staffing pattern indicates how many RNs, LPNs and PCAs there should be in a unit based on the census or number of patients; that there is no mention of patient acuity on the census staffing pattern; and that the normal practice of staffing is to do it according to the staffing patterns. And on recross Clark testified that the staffing pattern is a skill mix pattern that is supposed to be followed but it cannot always be followed because of the scheduling.

Anderson testified that the decision to implement patient focused care at Audubon was made on August 23, 1995, and it relayed to Audubon by Jim Pickle, who was, at the time, the president of the Kentucky division.

By memorandum dated September 1, 1995, Ronald J. Vigus, president and chief executive officer of Audubon, notified Audubon's employees of the "re-engineering" to patient focused care.

By memorandum dated September 21, 1995, the task force advised the Audubon employees about the progress of the "reengineering" effort. Attached to the memorandum is a four- page article on "Converting a Unit to Patient-Focused Care."

By memorandum dated November 30, 1995 (GC Exh. 457), Vigus advised Audubon employees about work redesign. In the memorandum Vigus indicated that "[t]his will allow us to care for our patients better than the incremental reductions that have occurred in the past." Anderson testified that the change to patient focused care was a dramatic change. The memorandum indicates that department managers have copies of the draft job descriptions and draft staffing guidelines and it gives a reengineering time line which, among other things, calls for leadership positions to be selected by December 13, 1995. Anderson testified that the job title staff nurse was not to continue after the reengineering but the clinical associate RN would have been probably equivalent to the staff nurse position; that the patient care leader position was an expanded role for what used to be the charge nurse position since the new role called for them to assume more explicit responsibilities for direction and supervision and management of not only the staff on the unit but the care of the patients on the unit; that the reengineering anticipated the reduction of the number of employees in the EKG, respiratory therapy and phlebotomy (blood drawing) departments (laboratory for phlebotomy) since employees in the patient care units, RNs or LPNs or PSAs, would provide some of these services; that before the reengineering routine EKGs and routine respiratory therapy was done on the floor where the patient was located; that it was projected that in the "long-run" there would be a reduction in the number of RNs required to care for the same number of patients; that that might have been a byproduct of the patient focused care but it was not a goal; that she did not know how many individuals had their hours reduced after the reengineering; that the reengineering process was not just a nursing department change, it was a facility-wide change effecting every job in the hospital; that the other Columbia HCA facilities in the Louisville area, Southwest, Suburban, and the University of Louisville Hospital (until it was no longer part of the Columbia system), were part of the reengineering network project; that the first goal of the reengineering was to improve the quality of care being delivered, the second goal was to improve Audubon's efficiency, and the third goal was to improve the financial status of the hospital; that other Columbia hospitals which had also undergone the reengineering process included some located in Dallas, Texas, and in other areas of Kentucky; that the Louisville hospitals were picked by Pickle to spearhead the patient-focused care approach because the largest facilities in the Kentucky division were located in Louisville; that before reengineering (a) most EKGs were done at the patient's bedside, (b) phlebotomy was done at the patient's bedside, and (c) routine respiratory therapy treatments were done at the patient's bedside; that, therefore, reengineering did not affect any change in the location of where those aspects of care were delivered and at the time she testified, June 6, 1996, the location had not changed but with full implementation there would be changes; and that she could not testify that more care was being provided at the patient's bedside than before reengineering but when the plan was fully implemented, which had not occurred yet when she testified in June 1996, assessments and the admission process would occur at the bedside.

A number of staffing pattern sheets which, collectively, cover the period before and after the commencement of the involved "reengineering" were received pursuant to stipulations of the General Counsel and the Respondent (GC Exhs. 458–512, except GC Exhs. 459 and 462). Anderson testified that during that portion of the reengineering for which she was present,[63] she was told that there was a staffing problem in the skilled nursing unit and she was aware that the physicians were concerned with the reengineering process in that they believed that it was going faster then they wanted and they questioned what it was going to do with respect to the quality of care for the patients; that RNs faced with the prospect of losing their jobs could not bump other nurses with less seniority on other shifts or in other units because the reengineering was done unit by unit and shift by shift; that there were fewer RNs working at Audubon in March 1996 then there were in September 1995; and that prior to the reengineering it was brought to her attention by nurse managers that there was insufficient staff on a unit and physicians brought up staffing levels.

Rebecca Picklesimer testified that within a week of seeing the above-described November 30, 1995 memorandum, she saw a proposed staffing pattern for 6 East (GC Exh. 530), in the conference room on 6 East; that the new staffing pattern had less RNs to take care of the patients in her unit; and that she resigned from Audubon and she told management that it was because they were not staffing according to the staffing pattern in that there were fewer nurses on the floor than were called for in the staffing pattern. On cross-examination Picklesimer testified that she did not know who wrote the proposed staffing pattern; that the staffing pattern was not formally posted but rather was floating around the

[63] Anderson left Audubon on March 4, 1996, and became administrator of Care Tenders of Louisville, which is a home health agency owned by Columbia HCA.

unit; that she never discussed this proposed staffing pattern with her clinical coordinator or nursing director; and that staffing patterns were not met at Audubon at times during 1994 and throughout 1995.

Irvin Kaiser testified that he is an RN patient care leader on Audubon's diabetic unit; that he saw General Counsel's Exhibit 558 posted on the bulletin board in his unit before the reengineering went into effect toward the end of February;[64] and that memos ("memdocs") from management are posted on the same bulletin board. On cross-examination Kaiser testified that he did not know whether a member of management prepared this document.

Stacy Myers Doyon testified that since April 1995 she worked in Audubon's labor and delivery department; that General Counsel's Exhibit 563 is a draft of a staffing pattern they received on the unit to look at prior to implementation; that she and her coworkers initialed the document; that the practice in this unit is to initial those documents in the communication manual which come from their clinical coordinator or their director to show that they saw the document; that she was relatively sure that this document was in the communication manual since it is initialled; and that she thought that she remembered seeing it posted on the unit next to the staffing pattern they were using at the time. On cross-examination Doyon testified that she did not recall the date that the document may have been in either the communication manual or taped to the bulletin board.

Patricia Clark testified that she saw a draft of a proposed staffing pattern in her area, 3 East, posted in the conference room (GC Exh. 459) in late November 1995; that the document indicated that there would only be one RN on each shift on 3 East and the rest of the care associates would be LPNs; that at the time she saw this staffing pattern the patient care leaders had not yet been chosen; that this proposed staffing pattern represented a big cut in the number of RNs; that later she saw a .5 patient care leader added to the staffing pattern; that the reengineering took effect in her unit on January 22, 1996, with the clinical associate RN having more responsibility in that this individual now did all the respiratory treatments, some phlebotomy, and oversaw all the new jobs that the PSAs have; that under the reengineering the clinical associate RN is caring for more patients than before; that she is patient care leader on days when patient care leader Canary is not working in the unit; that at the time she testified in June 5, 1996, the patient care leader position was basically the same as the charge nurse position before the reengineering; that, with respect to Anderson's testimony at the hearing about case management, the patient care leader on 3 East does not do any case management and this function is performed by discharge planners; that from the time in December 1995 when Audubon started putting out the drafts of the staffing patterns the turnover in her unit was "tremendous"; that in her unit Jewell Jackson, Pat Floyd, Jane Robertson, Valarie Miles, Selma Oliver, Glenda Phillips, Karen Thurman, and Sherry Young left when the draft staffing patterns first came out; that she did not recall any time when that many RNs left her unit; that six of seven new registered nurses have been hired on her floor; that before the restructuring she was never required or mandated to work extra shifts but rather the RNs would volunteer if there was a need; that after the restructuring the staffing was so small that Audubon started mandating people and when one went to work in the morning one did not know whether they would be working 8, 12, or 16 hours because they could be mandated to stay; and that this could occur two or three times a week.

[64] The one-page document is a staffing pattern.

Mary Elizabeth Bryan, who is a patient care leader on 4 East at Audubon, testified that she saw a proposed staffing pattern on 4 East (GC Exh. 572).[65] On cross-examination Bryan testified that she believed that the document was posted on the clinical coordinator's door or in that area some time in mid-December 1995.

Melinda Bagby, who is a staff nurse in coronary care at Audubon, testified that she saw the proposed staffing pattern received as General Counsel's Exhibit 574 in the coronary care unit at the nurses station in late November early December 1995; and that this proposed staffing pattern was handed to her and by Laura Wood.[66]

In its March 20, 1996 position statement to the Board (GC Exh. 575), counsel for Respondent indicates at page three as follows:

> The reorganization, therefore, has resulted in staffing patterns requiring 68 fewer FTEs. A 1.0 FTE is the equivalent of an RN working 40 hours per week. As many RNs work less than a 1.0 FTE, more than 68 RNs have been affected by the reorganization. In fact, a total of 152 RNs have experienced a reduction in FTE status. The vast majority of these RNs have experienced a variance from their previous FTE status of less than .5.

And on page 5 of the position statement counsel for Respondent indicates as follows:

> As noted, 152 RNs experienced a reduction in their FTE status as a result of the reorganization. Most of these RNs experienced between a .1 and .5 reduction in FTE status. The total impact of the reorganization was that 68 FTEs were eliminated.

Audubon's assistant director of human resources, Robert Nettles, testified that when he looked (compared) at the time period near the beginning of the reengineering and September to December 1995, he concluded that there appeared to be no significant change in the attrition rate for RNs; that Audubon's computer system could give the attrition of RNs for January, February, and March 1996; that the reengineering was implemented in most of the units in January 1996, and in others in February 1996; that he used an average number of 635 RNs to calculate the attrition rate; that he did not analyze the attrition rate among RNs at Audubon for the first quarter of 1996; that the more vacancies that Audubon had the more there would be a need to recruit for that category; that he was not aware of any special recruitment incentives such as bonuses offered at Audubon for RNs since he began working there in September 1995 and he would know about most of them if they occurred; that General Counsel's Exhibit 514[67] indicates that beginning April 1, 1996, there was an employee referral bonus program policy and procedure whereby the Audubon employee could get up to one thousand dollars for referring qualified candidates who are hired by Audubon into a number of job categories, the first listed being RNs; that he was aware of this program and he was not aware of a similar program since he first started working at Audubon; that he was aware that employees were being required to work extra shifts during the reengineering period; that General Counsel's Exhibit 514 indicates that on Sunday, March 17, 1996, ads for RNs

[65] Bryan testified that there was no handwriting on the copy she saw.

[66] The above-described August 11, 1995, consolidated complaint alleges that Laura Wood is the assistant director of nursing at Audubon. The General Counsel and the Respondent stipulated that GC Exh. 573, a proposed staffing pattern, has Laura Wood's handwriting on it.

[67] The memorandum indicates that it is an update on the concerns and suggestions discussed at a meeting held on March 12, 1996, of the patient care committee.

and respiratory therapists appeared in the local and national newspapers; that such ads may have been placed on more than just March 17, 1996; that under "*EMPLOYEE RETENTION*" on General Counsel's Exhibit 514 the following appears: "[e]mployees are being returned to their full time equivalent status based in staffing needs. This allowed benefits to be prorated to the appropriate FTE"; that other hospitals in the Louisville area advertise for RNs; that he did not think that there had been a reduction of the number of RNs at Audubon since he came to the hospital but there had been a reduction of the FTEs; that in an affidavit (GC Exh. 513), he indicated that as of April 1996 there was a reduction in the number of RNs by 62 lowering the number of RNs from 652 to 590, including pool employees but apparently not including clinical coordinators; that Audubon receives a monthly payroll report from a data center in Nashville, TN which gives the name of the employee, the department, job title, FTEs, social security numbers, etc.; and that he used this monthly report to arrive at the 590 RNs listed on General Counsel's Exhibit 513.

On February 16, 1996, Terry Hundley, who had worked as a RN at Audubon from October 1984, resigned her staff nurse position in pediatrics at Audubon. Hundley testified that during her tenure at Audubon she had worked as a charge nurse for over 5 years; that she held this position immediately before the above-described reengineering; that she was involved in the NPO before the first election in 1989 and she was involved with the NPO during the campaign before the 1994 election; that during the most recent campaign she wore union buttons, talked to other RNs in pediatrics about the Union, signed a union authorization card, and testified earlier about signing the card; that on September 15, 1995, she filled out a disclaimer form, which form was composed by NPO, and which form is used to document when a nurse believes that they are working in unsafe conditions, when there is a shortstaff situation or a hazardous problem (GC Exh. 515);[68] that on September 15 there were 22 patients in her unit and there were only two nurses, she and Paula Case, with no aides, no unit coordinators, no other staff; that the staffing pattern for 22 patients called for 3.5 RNs,[69] one LPN, and two and one half PCAs; that she informed her supervisor, Rochelle Turner, of the situation and Turner indicated that she had no one to send and she, Hundley, was on her own to get staffed; that when she was unable to get someone she telephoned Darrin Ford, the clinical coordinator, at home and advised him of the situation; that she spoke to the nurse who was in charge when she, Hundley, arrived on the unit and that nurse, Angela Sartain, signed the form; that when the other nurse who was going to work with her on the unit arrived she, Hundley, explained that she had filled out the form and the other nurse, Case signed it; that when the pediatric director came on the unit she told her, Donna Cook, about the situation and the fact that she, Hundley, was filling out the disclaimer because it was unsafe; that Cook tried to get help and when she could not she telephoned Ford and told him that he needed to come into work; that she discussed the disclaimer form with Ford when he came in and he wanted to know why she had filled it out; that she showed the form to Ford and he asked for it, indicating that it did not reflect that he had come in to the hospital during her shift; that she did not give Ford the form; that she had complained about staffing almost every time she was in charge, every time there was a shortage; that once before when she complained about being shortstaffed she was disciplined for "venting" to her nursing supervisor, Shirley Turner, in front of the house doctor for pediatrics and another nurse (GC Exh. 516); that in her annual evaluation for the period ending November 4, 1995, she was given an overall performance score of 2.48 out of a possible 5; that during her discussion of this evaluation with Ford he indicated that she complained too much about staffing; that this was the lowest evaluation she ever received in her working career;[70] that when the reengineering was implemented on the pediatric floor there were two patient care leader (PCL) positions available; that Case, who at the time had been an RN for about 18 months, and on the pediatric unit for about 1 year and 6 months, received the PCL position which Hundley believed she should have received; that she interviewed with Cook for this position, with Cook asking her whether she could support the restructuring and if she could get along with Ford; that when she did not get the PCL position she spoke with Cook who indicated that she, Hundley, did not get the position because of the disciplines in her file,[71] because she did not get along with management, because she was not flexible with her schedule, and because she was not supportive of the restructuring; that she and Case resigned on the same day in February 1996;[72] that during her exit interview she asked Ford if she could work as a pool employee; that subsequently she told Ford that she was advised that she did not have to have an exit interview if she was going to remain on the pool staff and Ford told her that Cook wanted to see her; that subsequently she met with Cook and Ford, and Cook told her that she was not eligible to remain in pool status because of her time and attendance[73] and they needed people that were supportive of the restructuring and because she did not get along well with management;[74] that subsequently she spoke with Donna Hilbert in human resources and was advised that she should not have had two of the points because they involved overnight hospital stays, namely, consecutive days off for surgery and a second surgery for which she had to take a leave of absence; that subsequently she spoke with Cook who indicated that she would have Ford check it out; that when she telephoned Cook later Cook said that she, Hundley, was still ineligible for the pool because they needed people who (1) were flexible with scheduling, (2) got along with management and it was a known fact that she did not like Ford, and (3) were supportive of the restructuring; and that she was not aware of anyone else who was asked to have an exit interview before becoming a pool status RN. On cross-examination Hundley testified that she did not remember ever talking to nurses in her unit about NPO after the election in front of a supervisor; that Cook knew about her union activity because she, Hundley, testified in

[68] The form is titled "FORMAL OBJECTION AND DISCLAIMER OF LIABILITY FROM COMPELLED ASSIGNMENT" and "DISCLAIMER FORM."

[69] The one-half being an RN for one-half of the shift.

[70] Her 1991 through 1994 annual evaluations were received as GC Exhs. 518 through 521, respectively. They show overall evaluation scores, respectively, of 3.41, 3.9, 3.9, and 3.7.

[71] In addition to the discipline described above, Hundley received and unexcused absence when one of her horses was injured and she had to stay with it until the veterinarian arrived.

[72] Hundley's letter of resignation was received as GC Exh. 522, and her personnel action request was received as GC Exh. 523.

[73] Cook told Hundley that she had 7.5 points and at 8 points she would receive a written reprimand. Hundley testified that she told Cook that Kim Cottingham had more attendance marks than she, Hundley, did; and that according to Respondent's policy (GC Exh. 524), overnight hospital stays and leaves of absence are not considered occurrences.

[74] Her absence tracking record, a doctor's note for the April 1995 surgery, and her personnel action request for the April-May 1995 medical leave of absence were received as GC Exhs. 525, 526, and 527, respectively.

December 1995; that with respect to the above-described disclaimer, she was afraid for her job because Ford had threatened to fire her on the spot in the past for comments that she made and when she could not come into work when he called her at home and told her to report to work although she was not scheduled; that she reported Ford three times to human resources about calling her at home, mandating her to change her schedule and threatening her if she did not come in; that she did indicate in public that she did not like Ford; that before she vented to Turner she had discussed the shortstaff situation with the nurses with whom she worked; that leaving Audubon was difficult because she loved working in pediatrics and since she is self-supporting she needed more than .8 status and the temporary registry position which was to last for 3 months; that over her objection, Ford marked the box "[d]issatisfied" on her PAR as her reason for leaving; that during her conversations with Ford he slammed his fists on the desk, "cussed" at her, talked about her children and harassed her; that in 1 year (January 1995 to 1996) 27 people left Ford's unit and 25 of those were nurses who had problems with Ford. Subsequently, Hundley testified that the hospital did not provide employees with the disclaimer form.

Nettles testified that he was not aware of anyone in pediatrics who was denied pool status other than Hundley but he was aware that Jackie Harper was not selected for a pool position by her supervisor, Lynn Smith.

Case testified that she interviewed with Cook for the PCL position and she told Cook that she, Case, was ready for a change and she wanted some management experience; that she was the least senior of the people who applied for the position; that Hundley trained her on pediatrics; that she was not a nurse during the 1994 organizing campaign; that she received a written discipline on October 24, 1995, for having accumulated 8.5 absenteeism and tardiness points within the last 12 months (GC Exh. 529); that she received this discipline before she interviewed with Cook for the PCL position; that when she resigned she told Ford that she wanted to continue to work in the pool and Ford said that Audubon does not deny anyone who wants to work in the pool; that subsequently Ford told her that she would have to speak to Cook about joining the pool and she asked Ford to have Cook give her a call; that Cook did not call and when she saw Ford later he said that she would have to speak with Cook; that she signed the above-described disclaimer since there was just Hundley and herself for 22 patients; and that most of the time Hundley was the one who brought staffing concerns to management's attention. On cross-examination Case testified that she did not like working with Ford and he was an unfair boss; that about 25 employees in Ford's unit left during his tenure; and that she did not engage in any union activity. Subsequently she testified that she resigned the same day as Hundley.

Gloria Gant testified that she was hired by Audubon in 1976; that during her entire tenure with Audubon she worked on pediatrics; that she became involved with NPO in 1991; that she solicited union authorization cards, she signed one herself, wore an NPO button, and was on the billboard on Poplar Road with other members of the NPO for approximately 2 years; that on August 17, 1995, she received a corrective counseling record alleging that she engaged in "[r]ude/negative behavior towards *patients* & visitors" (emphasis added) (GC Exh. 531);[75] that on August 16, 1995, she went into a baby's room to give the baby medication; that the baby had a central line[76] in and she had to turn the baby over on its back to check that there was no redness or leaking around the catheter site; that she explained to the parents of the baby that she had to turn the baby over to check the dressing; that the father assisted her in turning the baby over; that she checked the site and showed the father where it was okay; that she then turned the baby back over and gave the medication; that the baby did not cry or fuss and the baby went back to sleep; that she then left the room and sometime later during that shift she was told by Cottingham, who was the charge nurse, that the parents of this baby did not want Gant to take care of the baby anymore after the end of that shift because she woke the baby up; that she went to the baby's room with the charge nurse and asked the parents why they were upset with her; that the parents said that no one had ever wakened their baby up to give the medication and she explained that she had to check the dressing before giving the medication and she apologized for having to wake the baby up; that the charge nurse had to report what occurred to the clinical coordinator, Ford; that Ford asked her what occurred, spoke with the involved parents and then told her that she should not have gone back into the room and confronted the parents; and that she had never received a written warning before relating to her conduct.

Cottingham testified that the father of the infant told her that he did not want Gant to take care of the baby anymore because when Gant gave the baby medicine she woke the baby up after he had been trying to get the baby to sleep all day long; that the father said that no one had awakened the baby before; that the baby had to be turned over to get to the central line because the site had to be checked; that the baby woke up while being turned over; that she told Gant of the complaint and they both went to the patient's room where Gant told the father that if she did "anything wrong . . . taking care of the baby . . . she sure didn't mean to"; that the father said that they wanted someone else to take care of the baby and she and Gant left the room; that she observed the conversation between Gant and the father and Gant was not rude toward the father but rather was very professional; that she later informed Ford of the incident; that subsequently when she heard that Gant was going to be written up over the incident she tried to explain to Ford that she did not "think anything happened to where you can write somebody up over that . . . Gloria was very professional . . . and . . . [Ford said] we don't need to discuss this"; that no one else in management talked to her about this incident; that when she resigned in December 1995 she told Cook that she was leaving because of the stress on the floor and Cook asked her if one of the reasons she was leaving was her points (She had 12 and 1/2 points for her attendance and she had been told by Ford when she had 11 and 1/2 points that 12 points was the most you could get and over that she would be terminated.) and if she would like to stay in the pool; that she subsequently worked in the pool for a couple of days; that when she spoke with Cook about working in the pool she had already received two attendance and tardy disciplines (GC Exhs. 555, 556), with the first dated June 15, 1995, and the second dated November 2, 1995; and that she received a third which is dated December 12, 1995, and which indicates a total of 13.5 points. On cross-examination Cottingham testified that the baby's father told Gant that she could continue taking care of the baby for the rest of

[75] The form contains boxes for "minor (1.5 points), serious (2.0 points), major (3.0 points), [and] critical (6.0 points)." The "major" box is checked off. The form also notes that "six points in any 12-month period may result in termination." Gant noted on the form that this was the first time in almost 30 years of nursing that she was accused of being rude to a patient or to a patient's family.

[76] It is a catheter that is placed in the subclavian vein to give long-term I.V. medication.

the day but he did not want her taking care of the baby for the rest of the time that the baby was going to be there.

Regarding the complaint against Gant, Hundley testified that she had contact with the family of the patient, a 6-month old; that the father complained to her while she was charge nurse about LPN Sandy Woods, indicating that he did not want her checking his baby every hour; that the baby had a central line and Woods was checking it every hour to make sure it was not leaking; that the family complained about the way aide Chuck Bibelhauser took the baby's temperature, changed the baby's diaper, and wore an earring in his ear, indicating that they did not want Bibelhauser in the room; that the parents told her with respect to Lauraetta Hardin that they hoped that she wouldn't frighten the baby because the baby had never seen a black person; and that she discussed the complaints with one of the baby's doctors and the doctor said that she realized that they were difficult, and as soon as they had no one else to take care of their baby, she would transfer them to Kosair.

On August 23, 1995, Gant was checking a patient's I.V. site with the mother in the room. The mother became faint and Gant who was holding the baby also held on to the mother to keep her from falling. As a result, Gant injured her wrist and shoulder and had to be placed on transitional duty (GC Exh. 532). Gant testified that she was still on transitional duty in pediatrics during the restructuring period;[77] that on January 17, 1996, Cook told her that since she, Gant, was on transitional duty she did not show up on the pediatric staff and there was no position for her; that Cook further stated that she would not offer registry until Gant came off transitional duty and Gant could apply for any position throughout the house if there was something available but there was no position in pediatrics; that she asked Cook about her evaluation which was due in July 1995 but which she had not received; that about 3 or 4 days later Ford called her at home and told her that he was changing her shift, he had checked with employee health and they said it was okay to put her on the 3 to 11 shift because they no longer needed her on the day shift; that she told Ford that it would be inconvenient for her to work the 3 to 11 shift; that she had diabetes and worked the first shift since 1984 except for a few times when management put her on the 11 to 7 shift and she had problems with her diabetes; that management was aware of her diabetes; that she started the 3 to 11 shift on January 22, 1996; that on January 31, 1996, she met with Ford who gave her evaluation which is dated July 18, 1995 (GC Exh. 533);[78] that the 2.35 evaluation she received was the lowest she had ever received;[79] that Ford, during this meeting mentioned her sick leave, the aforementioned conduct discipline, and the fact that she was not able to perform her duties due to her injury; that in the comment section of the evaluation Ford referred to "employee conduct discipline on file"; that as noted above that conduct discipline was issued in August 1995; that she did not have any other conduct discipline and the evaluation period, as noted above, was for a 1-year period ending July 18, 1995; that she filed a grievance on February 8, 1996, with respect to her transfer to the second shift and with respect to the above-described written warning (GC Exh. 540); that she met with Riley concerning the grievance and she showed Riley the daily assignment sheets from the pediatric floor which showed, contrary to what Ford said, that there were day needs (GC Exh. 541);[80] that Ford generally composed the daily worksheets; that subsequently she met with Nettles and Cook and later with Becky Kahl about her grievance and she was put back on first shift after she had problems with her diabetes, she had to seek medical attention and her doctors wrote a letter stating that she had to be placed back on first shift in order to control her diabetes; that in her March 19, 1996 response to the grievance (GC Exh. 543), Cook, in treating the conduct discipline, refers to "a failure to follow the Charge Nurse's Instruction as well"; that this allegation had never been raised in her meetings with Nettles and Cook; that the night of the incident Cottingham never instructed her not to speak to the parents or not to go back into the patient's room and Cottingham accompanied her when she went back to the patient's room; that in her April 24, 1996 response to the grievance, Kahl indicates in part "[a]fter much thought and deliberation my decision is to uphold the disciplinary action dated August 16, 1995. This action is based in the fact that you took issue with the family inspite [*sic*] of the recommendation by the charge nurse to not do so" (GC Exh. 544); that this was not raised in her meeting with Kahl; that she met with the CEO of Audubon, Michael Louviere, and by memorandum dated June 3, 1996 (GC Exh. 545), he indicated that he was going to reduce the points on her conduct discipline from 3 to 1.5; that Louviere, days before she testified herein on June 6, 1996, told her that Riley agreed with the decision to drop the points.[81] On cross-examination Gant testified that after the NPO election she continued to wear NPO buttons to work and she continued soliciting union authorizing cards; that she was aware that these same parents who complained about her had complained about Woods checking the baby too frequently; that in September 1995 another parent complained that when she asked about when Gant was going to insert a feeding tube Gant allegedly said "I'm busy right now . . . [and] you'll have to wait till we get around to you" (R. Exh. 69);[82] that she worked for 4 weeks on the second shift before going back the first shift; and that she suffered insulin reaction on the second shift and she had a problem seeing at night.

Nettles testified that Respondent's transitional duty policy, in effect since June 1, 1995, is found in Respondent's Exhibit 72;[83] that employees on transitional duty are assigned to department 949 for

[77] She could not push or pull and there was a restriction on the amount of weight she could lift.

[78] The specified appraisal period is from July 18, 1994, to July 18, 1995.

[79] The parties stipulated that out of a possible 5 on her prior evaluations Gant received a 4 in 1989, a 3.7 in 1990, a 3.9 in 1991, a 4 in 1992, a 3.9 in 1993, and a 3.61 in 1994 (GC Exhs. 534 through 539, respectively). Gant testified that the evaluations have an impact on her longevity bonus.

[80] The form lists four shifts, namely 11–7, 7–3, 3–11/3–7, and 7–11. Gant also sponsored additional daily assignment sheets (GC Exh. 542).

[81] The General Counsel introduced a number of disciplinary records (GC Exhs. 546 through 554), which involve either minor or serious offenses which collectively include incidents such as confronting a family after a complaint was made, being rude, using profanity in a public area, failing to check a patient's armband with respect to blood tests, and engaging in conduct detrimental to patient care. As noted above, Gant was not charged with a minor or serious offense. Rather, she was charged with a major offense. Also as noted above, a minor offense calls for 1.5 points.

[82] Gant denied the alleged offense in her response pointing out that the attitude of this mother changed when, after asking Gant for a case of prescribed costly formula apparently so that it would be covered by medical insurance, she did not receive the formula from the hospital. Gant's response indicates that the alleged conversation never took place. Gant was not disciplined regarding this matter.

[83] The policy indicates that whenever possible, the employee will be assigned to their home unit/department. Also some of the guidelines include "[a]n employee is not to be counted as staff unless the job duties they are performing meet a need of a particular unit or department" and "[i]f an employee remains on Transitional Duty for six months, the employee's position may be posted."

payroll purposes so that Respondent can see how many employees are on transitional duty at one time and the payroll dollars will show up in one cost center (R. Exh. 73); that if the employee on transitional duty is not able to meet the essential functions of their preinjury occupation, they are not carried on the staffing pattern of the particular unit in which they are working; that Gant was still on transitional duty when he testified regarding this matter, June 6, 1996; that Gant was not carried on the staffing pattern of the pediatrics department during the reengineering but during and after the reengineering she was assigned to work in the pediatrics department; that prior to the reengineering Gant worked on the first shift; that there was no limitation in her file precluding her from working on the evening shift; that in his discussions with the department manager and the clinical coordinator he advised them that Gant could be reassigned to the second shift; that after Gant worked on the evening shift for about 2 to 3 weeks, she was reassigned to the first shift pursuant to a decision he and Cook reached after it was brought to their attention that Gant was having a difficult time adjusting to the second shift because of her diabetic condition; that before she was reassigned to the second shift she did not bring any of these concerns to his attention; that Respondent's Exhibit 74 is Audubon's attendance policy, Respondent's Exhibit 75 is Audubon's employee conduct policy and Respondent's Exhibit 76 is Audubon's policy regarding patients' and families' complaints; that under Audubon's employee conduct policy a minor offense is assigned 1.5 points, a serious offense is assigned 2 points, a major offense is assigned 3 points, and a critical offense is assigned 6 points, and after an employee has accumulated a total of 6 points within a rolling 12-month period the individual will be disciplined up to and including termination; that there are occasions when complaints are made regarding the conduct of an employee and it is determined that there is no wrongdoing; and that Respondent's Exhibit 77 is a list of the scores of a number of performance evaluations in pediatrics department 640, he verified the accuracy of the numbers and they represent the RNs who were in the department at the time that he testified in June 1996.[84] On cross-examination Nettles testified that Gant was limited in that she could only lift or push or pull 11 to 25 pounds, her reaching using the left arm was limited, she had limited use of the left arm when using both hands, and with repetitive wrist movement her use of her left wrist was limited to 15 minutes per hour; that at the time reengineering began Gant had not been on transitional duty for 6 months and therefore her position could not have been posted; that the transitional duty policy was in effect before and after the reengineering; that during the reengineering Gant was still on transitional duty and therefore she was not eligible for selection; that an RN with more seniority than Gant was selected for the .8 FTE clinical associate position on the day shift and Gant was not on the seniority list; that Gant's reassignment to the second shift had nothing to do with the particular tasks that were needed to be done on the second shift as opposed to the first shift because the same work is done on these two shifts; that Cook made the decision to utilize Gant on the second shift; that points under the attendance policy are considered separately from points under the conduct policy; that the fact that the parents complained unreasonably about most of the nurses who were taking care of their child did not "alleviate" Gant with respect to how she reacted to the complaint about her conduct; and that Cottingham told Gant not to take care of that patient any day following the day of the incident. On redirect Nettles testified that there was only one .8 FTE available on pediatrics and that went to the most senior person who was not Gant; that even if Gant had been in rotation she would not have been selected for that .8 FTE position; and that there is no transitional duty policy which states that a person's position cannot be eliminated while they are on transitional duty. Subsequently Nettles testified that in her response to Gant's grievance Cook indicated that there was a failure to follow the charge nurses instruction as well (GC Exh. 543); that this language was discussed in his presence when he participated in the grievance procedure; that the charge nurse's instructions that Gant did not follow was that she was going to be off the patient care rotation and the charge nurse recommended to her not to go in to the patient's room after that point, that Gant should not go into the patient's room "after her rotation was over" which would be the end of that shift; and that there was no recommendation that Gant not go into the patient's room during the remainder of the shift.

Ann Hurst was hired by Audubon in 1981 and she has worked as a staff RN on the Med-Surg Telemetry floor on 5 West since that time. Hurst testified that prior to the reengineering her FTE status was 1.0; that she had been the relief charge whenever charge nurse Shannon McMahan was off; that she has been active in the NPO since they began organizing; that she solicited signatures on union authorizing cards, her picture appeared in the NPO booklet and on the billboard on Popular Road, which stayed up for over a year, she wore union buttons to work, leafleted several times for the Union outside the hospital and she testified earlier in this proceeding about union authorization cards she had other employees sign; that other RNs who worked on her shift on 5 West included Michele Cowden, who had 30 years with Audubon and St. Josephs, Judy Chappell, who came to Audubon in 1987, Pat Furguson, who had 20 or more years seniority, Lori Stewart who had been a RN for a couple of years, Andy Reichle who came to Audubon in 1984 or 1985, Terry Assucion, who had been at Audubon a couple of years, and Susan Mattuissi, who had been there about 2 years; that for the morning shift there were two patient care leader positions available and two clinical associate RN positions which were awarded by seniority; that the two RNs with the most seniority, Cowden and Furguson, took the two clinical associate RN positions; that she and all of the other RNs on her shift, 5 West day shift, applied for the patient care leader positions; that she had the most seniority among those applying; that in January 1996 she interviewed with McMahon, who was the clinical coordinator at the time; that McMahon told her that Karlene Pietranton, who became the director over 5 West, would make the decision; that Chappell and Stewart were offered the patient care leader positions; that she was offered a .5 part-time patient care leader position which would mean that she would have lost her vacation time, there would have been a change in the cost of her insurance (apparently referring to medical) and she would not have been able to live on her pay; that Mattuissi was offered a job on another unit as a patient care leader, Assucion was offered a patient care leader position on the afternoon shift, Reichle was offered a patient care leader position on the night shift and

[84] One of the counsel for the General Counsel pointed out that a review of the underlying documents indicated that Respondent accurately reflected the scores that the listed individuals received on the listed evaluations but she believed that other specified individuals should have been included in the list. Counsel for the Union echoed the above-described opposition indicating that there were at least six RNs working on pediatrics at the time who were not included on the list and that the document is limited in what it indicates. On cross-examination counsel for the Union specified the individuals who she believed should have been on the list. Nettles testified that the named individuals whom he recognized were RNs who worked in pediatrics but "not all those are on the list," he pulled only those files of the employees who are on the list and there was no particular reason why he picked the names on the list and omitted the other individuals named.

none of these RNs were reduced to part time .5 status; that when she subsequently discussed this matter with McMahon she, Hurst, was told that if she accepted she could work on the registry to make up the difference until April 1, 1996; that when she subsequently discussed this matter with Pietranton she, Hurst, was told that Stewart interviewed better than she, Hurst, did and Stewart wanted the job very badly and she came across that way; that Chappell was very vocal in indicating that she would not support the NPO in any way; that Stewart was not a RN until after the union election and she, Hurst, was not aware whether Stewart expressed her support or nonsupport of the Union; and that in April 1996 she had her 1.0 FTE returned when she accepted a clinical associate RN position.[85] On cross-examination Hurst testified that she was told that seniority was not the main criterion in determining who would receive the patient care leader positions; that she did not apply for any patient care leader positions other than the day shift positions; that Reichle signed a union authorization card and no one else, as here pertinent, wanted the night shift position; that in 1994 her nurse manager, Colette O'Brien, said something to her about her activities on behalf of the NPO; that before she became clinical coordinator McMahon said something to her about her activities on behalf of the NPO; that McMahon become clinical coordinator in December 1995; that she did not want to work nights and she did not apply for one of those positions; that she filled in for patient care leaders about three times when they were not on the floor and there was no difference between that position on her floor and the charge nurse position; that about one week after she took the .5 patient care leader position Pietranton told her that she had worked it out with management and Hurst could have a full time 1.0 position but she did not sign the papers indicating that she had this clinical associate position until April 1, 1996; and that she was able to keep the same hours that she was working before the reengineering. On redirect Hurst testified that McMahon told her that she was opposed to the Union, any union;[86] and that with respect to an issue raised by Respondent on cross-examination, namely, whether anyone in management said anything to her about her activities on behalf of the NPO, Hurst testified that Vandewater told her while she was wearing a union (NPO) button that "he was very opposed to Unions and he would do anything in his power to prevent them."[87]

Particia Clark, who as indicated above, is an RN at Audubon who started in 1977 and became president of NPO in October 1994, testified that she has been active in the NPO for some time; that she helped write an article in the September 1994 NPO newsletter about restructuring (GC Exh. 564), and she helped to distribute it by, among other things, leafletting at Audubon; that she spoke at a candlelight ceremony in March 1995 in Jefferson Square Park in Louisville which, according to the flyer promoting the gathering, dealt with "Patient Care Crisis" and "Dangerous short staffing . . ."; that she believed that television channel 41 was at the ceremony; that in March 1995 she was on a Louisville radio talk show about restructuring at Audubon; that as of November 1995 she was an .8 FTE staff nurse on 3 East; that she asked Wempe what the benefits would be for the proposed .5 patient care leader and Wempe later told her that she would not be able to take sick days since they would be put in a bank for if she ever became full time again, vacation time would be cut, and the cost of her medical insurance would increase "tremendously"; that she therefore changed her self-nominating form to reflect that she was seeking a 1.0 patient care leader position (GC Exh. 566); that around December 21, 1995, Jacqui Falk, who is a clinical coordinator, and Wempe together interviewed her for the patient care leader position; that during the interview when they asked her if she supported the hospital she asked them to explain what they meant; that she told them she supported the hospital and she was proud of her floor and proud to work at Audubon; that she was asked about how she felt about the restructuring of the hospital and ultimately she said that she was willing to try it notwithstanding everything she read and heard about it; that during the interview she indicated that she preferred the 1.0 to the .5; that she was told that she would hear about the results by December 26 or 27, 1995; that when she did not hear by the beginning of the new year she telephoned Wempe who told her that the 1.0 patient care leader position went to Brenda Canary who came to Audubon in 1984; that Canary was an observer for the hospital in the 1989 election and she wore "No" buttons; that when she asked about the .5 patient care position Wempe said "oh, you wanted that"; that later Wempe told her that she could have the .5 patient care leader position and she would get an additional .3 on the registry until April 1996; that on January 22, 1996, she filed a grievance over not receiving the 1.0 patient care leader position (GC Exh. 567); that on February 1, 1996, Wempe replied (GC Exh. 568), denying the grievance;[88] that on February 7, 1996, she appealed (GC Exh. 569);[89] that subsequently she was informed that her grievance was denied; that in the late 1980s she was a designated charge nurse but the hospital had all of the charge nurses re-bid for their jobs after the 1989 union election and those who re-bid were reinterviewed; that during her reinterview her supervisor, Laurie Tiebolt, questioned her about her union activities, what went on at union meetings, and about the Union and its function; that after that interview Jacqui Falk was awarded the charge nurse position and Clark filed a grievance over the outcome; that Bill Brown, who was CEO of Audubon at the time awarded the charge position back to her if she wanted it; that she declined for the sake of the unit, with the written understanding (GC Exh. 570), that when the designated charge nurse position became available she would be given the position if she was still interested; and that Wempe was the nurse manager at the time and Wempe was involved in the events leading up to the grievance and the processing of the grievance, and Wempe was aware of Brown's 1991

[85] The General Counsel and Respondent stipulated that Hurst received a 3.6 (out of 5) on her 1994–1995 annual evaluation (GC Exh. 559), and a 4.0 on her 1993–1994 evaluation (GC Exh. 560), where she was described as Martha Hurst; and that Stewart received a 3.5 on her 1994–1995 evaluation (GC Exh. 561), and a 3.6 on her 1993–1994 evaluation (GC Exh. 562), where she was described as Loretta Viau.

[86] One of the counsel for Respondent objected to this inquiry indicating that he did not pursue this line of questioning as to what McMahon talked about when she was a rank-and-file employee. As noted above, McMahon was charge nurse before she became clinical coordinator.

[87] Hurst also testified that as they parted Vandewater shook her hand "and he squeezed it a lot harder than I thought he should have"; and that this occurred before the 1994 election.

[88] In her response Wempe indicates that there was no discrimination of Clark due to her affiliation with the NPO. Also Wempe indicates in her response that when Clark asked what Wempe meant by her question whether Clark supported the hospital, which question was asked during the interview, she, Wempe asked nine questions which are specified in Wempe's response.

[89] In her appeal, Clark indicates as follows:

> Contrary to what Wempe has written in her February 1 letter, she did not respond by asking that list of questions. Instead, when I asked her to elaborate on what she meant by that question, she simply repeated the same question, "How do you support the hospital?"

resolution of the grievance. On cross-examination Clark testified that while she worked on the registry until April 1996 she received an enhanced pay rate for all of her hours; that at the time she testified in June 1996, she was no longer working out of the registry and she had a .8 FTE on the floor which is the same as she had before the redesign; that during her interview for the patient care leader position she told her interviewers that her research indicated that patient care focus did not work; and that she signed an affidavit on April 27, 1996 (R. Exh. 71). On redirect Clark testified that while she worked as a relief charge nurse since 1991, she was not a designated charge nurse during this period because no designated charge nurse position on her unit on her shift opened up during that period and Falk continued as designated charge nurse until Audubon created the clinical coordinator position when the designated charge position ceased to exist; that when she was restored to her .8 FTE status she was not told why she was being restored; that when the reengineering began there were staffing problems in that there were not enough RNs and LPNs; that in April all those on her floor who had a reduced FTE status were all offered an opportunity to return to their former FTE status; that attached to her above-described affidavit are patient care leader job descriptions which were distributed by Audubon; that the job description distributed by Audubon in December 1995 calls for the patient care leaders to be involved in disciplining, directing staff, completing evaluations, and be involved in the hiring of staff; that she asked Wempe about the job description and Wempe said that she did not know anything about patient care leaders disciplining, or hiring or firing; and that patient care leaders are actually performing the charge nurse job.

The General Counsel and the Respondent stipulated to a list dated June 5, 1996, which lists 86 RNs who resigned or retired between 1/1/96 and 6/5/96 (GC Exh. 576).[90]

With respect to Respondent's Exhibit 78 which purports to be a list of the RNs on staff at Audubon on "6/4/1996," Nettles testified that he requested Ruth Ballinger to prepare it; that the list contains about 18 clinical coordinators; that the list is an accurate list of all RNs at Audubon in June 1996; that he reviewed it against personnel records and the human resource information system; that one would expect that if someone had been terminated more than 6 months before the list was prepared that person would not be on the list; that Joanne Sandusky is on the list; that the clinical coordinators are in the list because they are RNs; that the directors of nursing are RNs but they are not on the list because they should not be on the list; and that the clinical coordinators are on the list because "[t]here's no indication why they shouldn't be on the list." Ballinger testified that she produced the document on June 4, 1996, at the behest of Riley and Nettles; that after she printed out the document she noticed that Sandusky's name was on the list even though Sandusky is not a current employee; that she asked Riley why Sandusky was still printing out and whether she should leave Sandusky on the list; that Riley said to leave Sandusky's name on the list; that she reviewed the list's accuracy and Sandusky is the only person on the list who is not currently in the employ of Audubon;[91] and that she produced General Counsel's Exhibit 2 which is titled Total RN staff and is dated January 5, 1994. On cross-examination Bellinger testified that she did not know how many people on the list were in the "I" category; and that she did not know if Sandusky was on a LOA.

Analysis

Paragraph 5(a) of the August 11, 1995, amended consolidated complaint alleges that about early January 1994 Martin informed an employee that a fellow employee "burned her bridges" by engaging in union or protected concerted activities thereby implying that employees who engage in such activities would be subjected to discrimination or discipline. On brief, the General Counsel contends that Martin clearly indicated to Heck that employees who participate in group protests concerning working conditions were jeopardizing their opportunities for promotion. Respondent, on brief, argues that the statement which Martin made according to her testimony, namely "a lot of water under the bridge regarding Vivian" had nothing to do with Flener's (Zollman) union or other protected activity but rather referred to Flener's alleged constant complaints about her personal life; that since Martin's statement, even if unlawful (a point which Respondent does not concede), was made in December 1993, it was made outside the critical period[92] and cannot support overturning an election; and that since the statement was made in the presence of one employee it was de minimis and could not have affected the results of the election. With respect to Respondent's witnesses on this point, on the one hand we have Martin testifying that Flener had personal problems and at work she could come across negatively about everything; and that Cook was someone who Flener would normally discuss her problems with. On the other hand, we have Cook testifying that Flener was the strongest of the three applicants for the position and she did not have any negatives as far as being considered for the charge nurse position. Martin's explanation is not credited. Heck impressed me as being a credible witness. Her testimony about what was said is credited. As far as the timing of the statement is

[90] These parties also stipulated that two specified individuals on the list were discharged.

[91] On voir dire Bellinger testified that she reviewed the accuracy of the list by producing another list that covered the terminations of RNs for the last 9 months and compared the two lists and no name appeared on both lists; that there are sometimes errors in the system; that she did not think that R. (Exh.) 78 contained clinical coordinators; that as Nettles testified, the list does contain clinical coordinators; that to produce the list she had to enter position numbers and one of the numbers she entered was for clinical coordinators; that if she entered an existing position number for a classification which should not be on the list, those in that classification would be on the list in error; that if she made mistakes in entering position numbers someone who should be on the list might not be on it; that she did not enter directors of nursing because they are exempt, "[d]irectors, managers, I never include them in RN staff listings"; that she obtained the list of terminations in the last 9 months from Audubon's data base by creating a query and requesting the information; that she requested a list of those "termed" in that last 9 months; that "termed" includes anyone who is no longer in the employ of Audubon for whatever reason; that all employees or former employees in Audubon's system are coded as either "A," "I," or "T"; that the "A" means active, the "T" means the person is no longer in the employment of Audubon, and the "I" is kind of a gray area which includes those on leave of absence (LOA) and others but she did not know anything about the "I" category beyond LOA; that Respondent's Exhibit 78 includes all employees who are in the "A" and "I" codes; that she included registered nurse applicants; that at the time she produced R. Exh. 78 clinical coordinators were salaried but, she keyed them in probably out of habit; and that she was aware in the fall of 1995 that a question arose in this proceeding about a list with Sandusky's name on it when she was supposed to have been termed; that this correction was not made in the system since the fall of 1995.

[92] The critical period in this matter is the period between January 6, 1994, the date the petition for election was filed, and March 4, 1994, the date the election was completed. *Goodyear Tire & Rubber Co*., 138 NLRB 453 (1962). As noted above, Flener, along with Holthouser, asked Respondent for recognition before the petition was filed. It is also noted that Flener signed the petition for election dated January 6, 1994 (GC Exh. l(a)).

concerned, it is noted that Cook testified that it was not announced until January 1994 that the position would not be filled. Consequently, Heck's testimony that the conversation occurred in January 1994 is credited. By the above-described conduct of Martin, Respondent violated the Act as alleged.

Paragraph 5(b) of the August 11, 1995, amended consolidated complaint alleges that about early February 1994 Respondent posted at its Louisville facility a notice entitled "Audubon Regional Medical Center Staffing Improvement Plan" announcing the establishment of a committee to deal with employees' terms and conditions of employment in order to discourage employees' union or protected concerted activities. On brief, the General Counsel contends that contrary to Respondent's contention this was not a continuation of the previously established PDC since the PDC had never played any role in staffing matters and it had been totally inactive throughout 1993; that Respondent's announcement itself constitutes an admission that the committee's staffing focus would be new for it states "will be developed" and the announcement further promises to develop a plan "to eliminate mandatory overtime within the next six months."[93] Respondent. on brief, argues that the PDC had, among other things, examined trends in staffing; that the announcement in question simply informed employees of an existing function of the PDC, although in a slightly different form and was thus lawful; and that the staffing subcommittee disbanded shortly after the election.[94] As noted above, Anderson had to retract her testimony that Cook became the chairperson in January 1993 for this occurred in January 1994. Cook conceded that staffing was an issue that was being raised by the Union during the union campaign; and that the one-page announcement about the PDC soliciting for membership was distributed in February 1994. As noted above, the General Counsel and Respondent stipulated that the announcement, a smaller version of which was received as General Counsel's Exhibit 419, was posted on an easel in Audubon in February 1994. As indicated by the General Counsel, the involved announcement itself indicates that something new was being proposed. Anderson testified that the staff was concerned about staffing and believed that nothing was being done about it. The announcement does not indicate that something had been done in the past regarding possible solutions to the staffing situation, and it does not describe continuing measures which had been implemented or even formulated prior to the campaign to solve this perceived problem. Rather, the announcement speaks to what the Respondent will do in the future. The fact that the subcommittee was disbanded shortly after the election has no significance other than perhaps to show that once it had outlived its usefulness it was done away with. By first addressing this longstanding expressed concern of the nurses during the involved union campaign by the announcement in question Respondent violated Section 8(a)(1) of the Act as alleged.

Paragraph 5(c) of the August 11, 1995, amended consolidated complaint alleges that about February 16, 1994, Respondent announced an increase in benefits for part-time employees and the implementation of a new long-term disability insurance benefit for all employees in order to discourage employees' union or protected concerted activities. On brief, the General Counsel contends that beginning in mid-February 1994, with the election approaching on March 3 and 4 Respondent began a flurry of announcements including, as here pertinent, the reinstatement of full-time benefits for certain part-time employees hired before January 1, 1994, and the availability of a long-term disability insurance plan. The General Counsel points out that this disability plan did not become available to employees until January 1995, 10 months after its announcement on the eve of the representation election and the University of Louisville Hospital, one of Audubon's sister hospitals in Louisville, did not announce in writing to employees the availability of the disability plan until the fall of 1994 because, as Bensing testified, before then he did not know for certain that it would be implemented and he had no idea as to when it would actually be effective. Respondent, on brief, argues that when Audubon's parent corporation, Columbia Healthcare Corporation, merged with Hospital Corporation of America (HCA) on February 10, 1994, Audubon management knew that Audubon employees would be participating in HCA's flexible benefit program which included long-term disability; that publicizing this benefit was a legitimate campaign strategy; that the conveyance of this purely factual information did not violate the Act and there was no adverse effect on the election; that in October 1993 Riley was told by Neil Hemphill, a senior vice president with Columbia, that he and HCA's benefits person were working on a program in which Columbia hospitals, including Audubon, would be allowed to participate in HCA's benefits following the merger; and that Bensing testified that the flexible benefits package was generally known to the employees at the University of Louisville hospital around December 1993 or January 1994. Although his name came up with respect to statements he made on at least two major points of contention in this proceeding, Hemphill never testified. For the reasons specified below, I did not find Riley to be a credible witness. Additionally, what was discussed in October 1993 regarding benefits under HCA had to be speculative in view of the fact the merger had not occurred yet and just what long-term disability plan, if any, would be made available had not and could not at that time have been finalized. Bensing testified that it would not have surprised him if the flexible benefits were discussed at the manager meetings in December 1993 and January 1994. Then one of the counsel for Respondent asked "[o]kay. And, would that have been made known to employees at or about the time" which question elicited the following testimony from Bensing: "I think, yeah, general, it would have been made known to employees." As indicated above, the merger did not occur until February 10, 1994. As

[93] More specifically, the announcement, GC Exh. 419, reads in pertinent part as follows:

> What are we doing about staffing?
>
> Here is part of the staffing answer . . .
>
> . . . .
>
> 4. A focus action team composed of staff RN's, LPN's, Nurse Managers and a staffing consultant, will be developed using the current *Professional Directions Committee* to develop short and long term staffing solutions.
>
> 5. The focus team and Professional Directions Committee will be charged with developing *a plan to eliminate mandatory overtime* within the next six months.
>
> . . . .
>
> WE ARE BEING RESPONSIVE

[94] Respondent also argues that this allegation is an improper resurrection of a previously dismissed charge regarding employer dominated employee committees in violation of Sec. 8(2) of the Act. As Respondent notes, the allegation here deals with an alleged violation of Sec. 8(a)(1) of the Act. Contrary to Respondent's assertion, the allegation here is not virtually identical to the dismissed charge. Here we are dealing with the question of whether Respondent, by making this announcement, interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Sec. 7 of the Act in violation of Sec. 8(a)(1) of the Act. It is noted that the Union's objection to the 1994 election alleges that the Employer acted unlawfully in promising to set up a committee or committees to solve staffing and other problems if nurses turned down union representation.

pointed out by the General Counsel the University of Louisville Hospital, one of Audubon's sister hospitals in Louisville, did not announce in writing to employees the availability of the disability plan until the fall of 1994 because until that time Bensign did not know for certain that it would be implemented and he did not know when it would actually be effective. The Union had made long-term disability a campaign issue. By William Brown's February 16, 1994 announcement Respondent was not stating a fact but rather it was making a promise regarding one of the concerns publicized by the Union. At the time of the announcement the promised benefit was not an existing benefit and it had not been finalized as a result of an already ongoing process. The announcement also indicated that certain benefits for certain part-time employees hired before January 1, 1994, were to be reinstated. The Union had made a campaign issue of the fact that Respondent had reduced the benefits of certain part-time employees. The timing and the fact that Respondent used the same announcement for both of these matters supports the contention that the announcement of the reinstatement of benefits to certain part-time employees was also intended to influence Audubon's employees. On the other hand, as pointed out by the Board in *Village Thrift Store*, 272 NLRB 572 (1983),

> A grant or promise of benefits made during an organizational effort will be considered unlawful unless the employer can provide an explanation, other then the organizational activity, for the timing of the grant or announcement of such benefits. Thus, the Board requires that an employer show by objective evidence that it would have made the same grant or announcement of benefits had the union not been present. [Footnote omitted.]

Respondent's evidence regarding what occurred at the University of Louisville Hospital and the difficulty which Audubon was allegedly experiencing with programming this change were not refuted. But Respondent chose to include notification of this change in the same memorandum which announced the offer of long-term benefits. The announcement ends with the following: "This new Columbia proemployee relations approach will provide all of us here more opportunities to make positive changes similar to what we are announcing today." Obviously, Respondent was attempting to achieve union disaffection with this announcement and it was holding out to the RNs the possibility of other similar "positive changes" which would benefit the RNs. By its own actions Respondent linked its announcement of the reinstatement of benefits to certain part-time employees with its attempt to achieve union disaffection. Respondent violated the Act as alleged regarding the February 16, 1994 announcement.

Paragraph 5(d) of the August 11, 1995, amended consolidated complaint alleges that about February 18, 1994, Respondent announced a wage increase for all employees to be effective March 20, 1994. On brief, the General Counsel contends that this announcement was made in order to influence employees in the upcoming representation election; that although the granting or announcement of an increase in wages or benefits during an organizing campaign is not per se unlawful, the Board as set forth in *Marine World USA*, 236 NLRB 89, 90 (1978), examines "whether, based on the circumstances of each case, the granting of increased wages and benefits is calculated to impinge upon the employees' freedom of choice in an upcoming scheduled election. . . ."; that the Board has found a grant of new wages or benefits during an election campaign lawful only where the employer has established that the action was consistent with an established past practice, was made pursuant to a decision reached before the commencement of the union campaign or was prompted only by legitimate business considerations; that Pugh's testimony establishes that the motive for the granting of a 60-cent wage increase for the registered nurses was to crush the Union's organizing effort in that Riley told that this was the reason the initial 40-cent figure was raised to 60 cents and Hemphill, the vice president for human resources of Columbia/HCA, questioned the hospitals' human resources managers, including Riley and Bensing, about whether the proposed wage increase would be enough to defeat the Union in the upcoming election; that Hemphill did not testify; that while Bensing did testify he failed to deny that Hemphill made this statement; that Riley merely testified that she did not recall anything like that being said; that Pugh's testimony is corroborated by documentary evidence and is inherently far more probable than the account presented by Riley; that the December 14, 1993, market adjustment proposal did not include any increase for staff RNs because during that period the attrition rate for staff RNs was lower than the average rate for the last few years; that Riley's contention that a corporate decision to grant an across-the-board raise after the first of the year had been made in the fall of 1993 is so contrary to the undisputed documentary evidence that it undermines her entire testimony; that Riley's claim that Howell's September 20, 1993 memorandum, to eastern division human resource directors is a commitment to grant an across-the-board wage increase flies in the face of the entire content of that memo; that Bensing's testimony contradicts Riley's position in that he testified that no one in regional management ever told him before he issued the January 11, 1994 proposal, that there was definitely going to be a market adjustment for the employees of the four Louisville hospitals in the early part of 1994; that Bensing testified that in September 1993 he was told by regional management to hold off until the first part of January 1994, and then they would look at things and see if they could make a move; that Bensing's testimony about the wait-and-see attitude is the virtual antithesis of the already-announced, carved-in-stone wage increase the Board has approved in the midst of an election campaign; that the justification for increasing the proposed RN raise from 40 to 60 cents at the last moment, namely to stay competitive after Jewish Hospital's regular spring raise, is logic defying since Riley and Bensing knew all along that Jewish Hospital normally gave a raise in the spring and the justification for this 50-percent increase in the proposal is nothing more substantial than this suddenly remembered fact about Jewish Hospital; and that Respondent had not met the burden of establishing that the wage increase was decided upon before the Union's petition was filed nor can it show that the wage increase was consistent with an established past practice since there is no consistency with respect to the time of year or interval between raises, nor is there any showing of raises being consistently triggered by any certain market conditions. The Union, on brief, contends that wages were a significant issue in the election campaign; that the Employer granted wage increases to its Louisville hospitals only and the increases were announced about 2 weeks before the election to be given about 2 weeks after the election; that the timing is crucial in that this preelection announcement of a postelection increase effectively made the granting of the increase conditional on the Union's losing the election; that the evidence shows that the sole purpose for granting the wage increase was to influence the employees' vote; that the evidence shows that the Respondent had no intention of granting any wage increases until the union petition was filed; that the announcement of the increase was a blatant attempt to induce the RNs not to vote for the Union; and that but for the union organizing campaign, there would have

been no increase. On brief the Respondent argues that Audubon and one of its affiliates had proposed a needed market wage adjustment in April 1993; that this proposal was put on hold because of the changing budgetary processes and pending the completion of several corporate mergers; that it is undisputed that a market wage adjustment was under consideration at Audubon for several months prior to the one in question which was announced in February 1994; that Riley recognized that an across-the-board market wage increase would be "possible" after the first of the year, given the September 20 Howell memorandum; that it is undisputed that Bensing had not discussed his January 11, 1994, wage proposal with Riley or anyone else at Audubon or at Columbia's corporate headquarters prior to its submission;[95] that on February 11, 1994, Bensing's January 11, 1994, wage adjustment proposal was sent to Riley; that the proposal for RNs was increased to 60 cents because it was anticipated that Jewish Hospital would give a raise to its nursing employees in the spring; that the granting of wage increases had been held to be lawful where such action is consistent with past practices or has been decided upon prior to the onset of union activities, *Marine World U.S.A.*, supra, enforcement denied on other grounds 611 F.2d 1274 (9th Cir. 1980); that it is undisputed that the pay of RNs at Audubon and its sister hospitals was behind the market, which was very competitive for RNs at the time; that Audubon was suffering recruitment problems in the RN category in the months preceding the election; and that the allegation that a sizeable wage increase was given to nearly 3000 employees not eligible to vote in the election in order to dissuade 600 voters who were either demanding or expecting a raise is ludicrous.

As pointed out by the General Counsel, Hemphill, the vice president for human resources of Columbia/HCA, questioned the hospitals' human resources managers during the late January 1994 meeting on the wage proposal, including Riley and Bensing, about whether the proposed wage increase would be enough to defeat the Union in the upcoming election. Hemphill did not testify to deny making this statement. While Bensing testified, he failed to deny that Hemphill made this statement. And Riley merely testified that she did not recall. Pugh's testimony is credited. He impressed me as being a credible witness. Riley was not a credible witness. She knew that this wage increase was not decided on prior to the filing of the involved petition yet she slanted her testimony in advancing this position even when Respondent's own documentary evidence did not support her. With respect to Respondent's past practice regarding across-the-board wage increases, Respondent had not given one since 1991. As Pugh testified, Respondent was satisfied to engage in the "lag" strategy from 1991 to 1994. This had been its practice during that period. Respondent, from 1991 to 1994 was satisfied to lag behind the wage rates of other Louisville hospitals by about 50 cents because its benefits were worth quite a bit more than its competitors' benefits so it was deemed to be okay. In 1994 it would have one believe that not only was it giving up on the lag strategy but it was going to give a raise to RNs of an amount that not only took into consideration the existing situation at other area hospitals but it was going to increase the wage adjustment even further upward in anticipation of what one of its competitors might do in the spring of 1994. Pugh's testimony regarding why the proposed raise was increased from 40 to 60 cents is credited. Finally, in my opinion the involved wage increase was not prompted by legitimate business considerations; it was prompted by the union campaign. Respondent's witnesses testified that in the fall of 1993 and in March 1994 Audubon had a vacancy rate of between 18 and 20 percent. But this was the situation in the spring of 1993. And we do not know how long before that this situation existed since Respondents' witnesses, Riley and Anderson, could not recall on cross examination. In the past Respondent dealt with the situation using agency nurses and then "mobiles." In other words, in the past Respondent did not give the raise and it coped with the situation. Respondent did not show how the situation changed to such an extent that it would have caused Respondent to change its past practice. In my opinion Respondent has not shown that the involved increase was prompted by a legitimate business consideration. Respondent violated the Act as alleged in paragraph 5(d) of the August 11, 1995 amended consolidated complaint.

Paragraph 5(e) of the August 11, 1995, amended consolidated complaint alleges that about the last week in February 1994, Respondent, by David Vandewater, at its Louisville facility, (1) threatened employees that their organizational efforts were futile and that Respondent would not negotiate with the Union in the event the majority of employees voted for the Union, and (2) solicited grievances from employees and promised to adjust them in order to erode employees' support of the Union. On brief, the General Counsel argues that according to his own testimony Vandewater personally addressed a total of between 50 and 120 employees on his February 1994 tours at Audubon, including an undisclosed number of RNs; that Doyon's conversation with Vandewater became a topic of conversation throughout the hospital; that subsequently another RN, Gentry, asked Vandewater about his conversation with Doyon; that other managers at Audubon helped to spread the word that Vandewater had stated that he would not negotiate with the Union even if the employees voted for union representation; that in one unit Vandewater said that he wanted to talk about the Union, asked the nurses if they had any questions, and assured the nurses that they were getting a long-term disability policy but they had to wait and see what was best for everybody; that Vandewater's testimony was particularly lacking in credibility; that Vandewater repeatedly asserted that the conduct of which he was accused was uncharacteristic of him, as if we should take his word for his character, if not for his denial of the specific conduct; that Vandewater revealed his character on the stand to be extremely argumentative and excitable; that when caught in a misstatement about whether he had approved any campaign documents distributed to employees, instead of simply admitting his mistake, he got angry and argued over what was meant by a "campaign document" and what was the "middle" of the campaign; that when he was asked whether it was possible that he might have applied excessive pressure in a handshake with a RN due to his strong feelings during their discussion, he said that it was not; and that contrary to his claim that his purpose during the organizing campaign was to let employees know that Columbia/HCA was better than the previous owner, Vandewater's written campaign statements are in a much more threatening vein. Respondent, on brief, contends that during his two tours Vandewater met no more than 100 Audubon employees total, not all of whom were RNs; that Vandewater did not seek out individual employees when he toured the units; that some NPO supporters actively sought out conversations with Vandewater; that Vandewater spoke about how Columbia was different and asked the employees to give the Company a chance; that the alleged threats that Audubon would refuse to negotiate should the Union win the election, allegedly made by Vandewater, Bishop, and

[95] As noted above, this assertion appears to be disputed by the changing testimony of Bensing for at one point he testified that at the time he submitted his January 1994 proposal he was aware that a petition for an election had been filed by the NPO, and before he submitted his proposal he "probably had some conversation" with someone at Audubon regarding the petition.

Block, were made to no more than 16 unit employees; that Vandewater, Bishop, and Block categorically deny threatening to refuse to bargain; that even if these statements had been make as alleged such were not coercive in the context of these conversations, in which the recipient of the allegedly threatening statement, in each instance, immediately refuted any contention that Audubon would not have to bargain with the Union; that in light of these responses, it is not likely that the employees directly affected believed that Audubon would actually refuse to bargain; and that in *Hospital of the Good Samaritan*, 315 NLRB 794, 809–810 (1994), testimony of ardent union supporters concerning threats by top management was not credited "as it appears unlikely that [respondent's president and chief executive officer] would make such blatantly unlawful statements as attributed to him by [union supporters] . . . in the presence of nurses who were demonstrably union supporters."

Stacy Doyon's testimony is credited with respect to what Vandewater said to her. She impressed me as being a credible witness. Vandewater did not. He was incapable of conceding even the obvious without prodding when faced with his own document. Also, Stacy Doyon's testimony is corroborated by Denise Davis. While Wood testified in support of Vandewater's position she was not a credible witness. Her attempt to portray Stacy Doyon as the aggressor or attempted intimidator in her conversation with Vandewater is at best questionable and at worst absurd when one considers that Vandewater is the chief operating officer of the over 300 hospitals owned and operated by Columbia/HCA, he stands over 6 feet tall, weighs 200 pounds, and runs 3 miles daily while Doyon is 5 feet 6 inches tall and weighed 120 pounds at the time. Doyon's husband also works for Audubon. Also important is the fact that Vandewater testified that he asked Wood to point out particular employees that she thought it might be important for him to talk to on a particular unit or they spoke to the manager of the unit. Vandewater did not specifically deny that he approached Stacy Doyon, that he motioned for her to leave the medication room and come to the nurses station area, and that he initiated the conversation asking Stacy Doyon if there were any problems or anything she wanted to talk about. Stacy Doyon did not attempt to intimidate Vandewater. Vandewater did attempt to intimidate Stacy Doyon and he ended the conversation with a handshake that he engaged in in an inappropriate manner. It is noted that according to his testimony he did not unintentionally apply too much pressure and hold the handshake too long. Vandewater wanted to make an impression. He did. While talking with Stacy Doyon, Vandewater threatened employees that their organizational efforts were futile and that Respondent would not negotiate with the Union in the event the majority of employees voted for the Union. He made it a point to do this with a union supporter and he did it in such a way that he was assured that the message would be passed on. The message was passed on by both employees and local management. Respondent violated the Act as alleged in paragraph 5(e)(i) of the August 11, 1995, amended consolidated complaint.[96]

As set forth above, Blankenbaker testified that Vandewater came to her unit, introduced himself to the nurses who were around the nurses station, said that he wanted to talk about the union vote and asked if the nurses had any questions. One of the nurses present asked Vandewater about the possibility of obtaining long-term disability and Vandewater said "[w]e're getting a long-term disability program, [w]e have to wait and see what is best for everybody." Vandewater ended the conversation saying "[w]e don't need a third party, please vote no. Give us time." He was accompanied by Nurse Manager Karen Binder. Neither specifically denied that the conversation occurred as Blankenbaker testified. Her testimony is credited. Contrary to the impression Respondent attempts to convey on brief, it was not a known fact at this time that the RNs would receive long-term disability as a consequence of the Columbia/HCA merger. This benefit was not announced to the employees at the University of Louisville hospital in writing until fall 1994 because it was not known to be a fact until that time or as Bensing testified, before then he was not certain it would be implemented and if it was, he did not know until fall 1994 the effective date. Respondent violated the Act as alleged in paragraph 5(e)(ii) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(f) of the August 11, 1995, amended consolidated complaint alleges that Respondent by (1) Sandy Bishop and (2) Star Block threatened employees that Respondent would refuse to negotiate with the Union in the event they selected the Union as their collective-bargaining representative. On brief, the General Counsel contends that Bishop told Vivian Flener Zollman and Pat Heck that Vandewater has already said that he will absolutely not bargain with the Union and you will have to go out on strike. Respondent, on brief, points out that Bishop could not recall saying anything to Flener (Zollman) and Heck about strikes and Bishop did not recall discussing Vandewater. The testimony of Flener (Zollman) and Heck is credited. Both testified that Bishop said that Vandewater said that he will absolutely not bargain with the Union and the employees would have to go out on strike. There were two supervisors present when this statement was made. One, Munson did not testify to deny that the statement was made. The other, Bishop, testified only that while she could not recall the content of her conversation with Flener (Zollman) and Heck, she believed that she would not have said anything that was unlawful. Since allegedly Bishop could not recall the specifics of the conversation, one would think that this was all the more reason to call Munson if Bishop did not make the unlawful statement. When faced with determining whether to credit the specific corroborated testimony of two witnesses or the alleged belief of Bishop, there should be no doubt about the outcome. Respondent violated the Act as alleged in paragraph 5(f)(i) of the August 11, 1995, amended consolidated complaint.

Regarding Star Block, as indicated above, RN Nancy McDonald testified that Block stated that Vandewater said that "staffing wasn't part of his . . . proposal [s]taffing wasn't negotiable" and "Vandewater had one proposal, and one proposal only." Block denies saying this. She also testified that at the time of this conversation she was working as house relief supervisor and was the only house supervisor on duty that evening, that when she served in this position on weekends she was the highest ranking nurse in the hospital, and that when she worked as relief supervisor she considered herself a supervisor. Block was paid hourly but she was listed in Respondent's records as a supervisor (C.P. Exh. 7). McDonald testified that Block's duties as a nursing supervisor included, among other things, transferring nurses to different areas of the hospital as needed, authorizing nurses to come in late or leave early and issuing occurrences or reprimands regarding absences. Block did not specifically deny that she performed these duties. As pointed out by the testimony of McDonald, at the time of the involved conversation Block was viewed as a supervisor by the em-

[96] As noted above, in its answers to the last two complaints involved here, Respondent has denied that Vandewater is a supervisor or agent of Respondent within the meaning of the Act. At a minimum Vandewater was acting as agent of the Respondent within the meaning of the Act with respect to the conduct which is alleged in the August 11, 1995, amended consolidated complaint to be a violation of the Act. By his conduct Respondent violated the Act.

ployee. Block, as she testified on cross-examination, viewed herself as a supervisor, and Block was designated as a supervisor in Respondent's own records.[97] Block was a supervisor at the time of the conversation. Her testimony on direct that as relief supervisor she did not have authority to discipline nurses was part of an attempt to show that she was not a supervisor. As noted above, another of Respondent's managers testified that Block had authority to participate in disciplining employees. Block was not a credible witness. On the other hand, McDonald impressed me as being a credible witness. Her testimony is credited. Respondent violated the Act as alleged in paragraph 5(f)(ii) of the August 11, 1995, amended consolidated complaint.[98]

Paragraph 5(g) of the August 11, 1995, amended consolidated complaint alleges that six named supervisors threatened employees collectively in January and February with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As noted above, while RN Peggy Fields testified that supervisor Laura Wood said, after showing a video which was about a strike, that "[t]his is the reason why . . . we should vote no to the union, because we *would* lose everything. We would start from ground zero. We would lose all of our benefits." (Emphasis added.), Fields' affidavit to the Board indicates that Wood said "[t]his is why it was important to vote no, because we *could* start from zero and lose all our benefits, so we should vote no." (Emphasis added.) Wood testified that she did not recall having a conversation with Kenny Doyon or Fields about collective bargaining during the campaign. On brief, Respondent contends that if a coercive statement was made, its alleged recipient, Kenny Doyon, would have testified. In view of the equivocal nature of Fields' testimony, which was elicited early in the proceeding, one would have expected that Kenny Doyon would have been called not to give his subjective impression but rather to corroborate Fields that Wood said "would." With the record in its present state, one could not, in my opinion, find that Wood said "would." Consequently, this portion of the involved complaint, paragraph 5(g)(i), will be dismissed.

Paragraph 5(g)(ii) of the August 11, 1995, amended consolidated complaint alleges that Supervisor Karen Purviance threatened employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As set forth above, Fields testified that Purviance said "[i]sn't it nice that we can be so flexible now, but if the union got in, we wouldn't be able to be flexible." Purviance testified that she told Fields that if the Union came into the hospital that flexibility could be altered or eliminated. On brief, the General Counsel contends that Purviance admitted making a substantially similar statement. As indicated in the next preceding paragraph, Fields either was not able to differentiate between "would" and "could" or she was mistaken either in her testimony or affidavit. In either case the result is the same; the reliability of her testimony suffers. If Purviance used the word "would," then there would be a valid question as to whether she was making a threat. On the other hand, if she used the word "could," she was not making a threat in my opinion, in the context in which it was used. Rather, she was pointing out a possibility. Purviance's testimony is credited. Consequently, this portion of the involved complaint, paragraph 5(g)(ii), will be dismissed.

Paragraph 5(g)(iii) of the August 11, 1995, amended consolidated complaint alleges that Supervisor Laura Polson threatened employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As noted above, Kleitz testified that Polson said, "Well, I sure would hate to lose all my benefits" and "Well I hate to lose everything I've gotten . . . if they vote the Union in then we lose all our benefits. We start from scratch"; and that Polson said that she had 3 or 4 weeks of vacation, sick leave, and insurance and she did not want any of that to be "messed with." On brief Respondent contends that Polson vehemently denies making any threats regarding zero benefits, and never said nurses would lose benefits if the Union were voted in; and that Kleitz conceded that Polson said that she would hate to start from scratch not that Kleitz would have to start from scratch. Kleitz's testimony is credited. Polson's denial could not be reasonably characterized as vehement. Polson never denied that at the time she had 3 or 4 weeks vacation. If she did not, undoubtedly this point would have been raised by Respondent. If she did have 3 or 4 weeks vacation at the time, Polson did not explain how Kleitz would have known this absent the threat. Respondent's ostensible reliance on the fact that Polson said that she would hate to start from scratch is misplaced in that such a statement would not reasonably be taken literally but rather would be taken figuratively (if I were you) since Polson would not be a member of the unit and having the union act as the RNs' collective-bargaining agent should not affect Polson's benefits. Respondent violated the Act as alleged in paragraph 5(g)(iii) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(g)(iv) of the August 11, 1995, amended consolidated complaint alleges that Supervisor Kay Kirby threatened employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As described above, Gentry testified that Kirby said that "[w]hen the negotiations come down the playing field will be completely level and we will start with no benefits at all" and it was her understanding that the benefits "would start from zero and that we would have no benefits and we would have to start from nothing, the ground floor, to get anything." Kirby, in effect, denied making these statements. She did not impress me as being a credible witness, however. Kirby initially tried to convey the impression that she was not trying to persuade the RNs to vote against the Union and she never said to an employee that they should vote no. When pressed on cross-examination, however, she conceded that she told employees that it would be better if they did not have a union and that she wore a button which said vote no in the election. On the other hand Gentry was candid and capable of admitting the obvious on cross-examination. Her testimony is credited. Respondent violated the

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[97] Additionally, as noted above, Anderson testified that as house supervisor Block had the authority to participate in disciplining employees, she could engage in verbal counseling, she could issue written warnings which are placed in the employee's personnel file, and she had responsibility for formal written evaluations which impacted merit increases. Sec. 2 (11) of the Act provides:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The indicia of supervisory authority is interpreted in the disjunctive and the possession of any of the authorities listed placed the employee invested with the authority in the supervisory class.

[98] While par. 5(f) of the August 11, 1995, amended consolidated complaint does not include Deusel, as found below, the testimony of Steven Nancz that Deusel, among other things, said that the hospital did not have to negotiate is credited.

Act as alleged in paragraph 5(g)(iv) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(g)(v) of the August 11, 1995, amended consolidated complaint alleges that Supervisor Donna Cook threatened employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As described above, Heck testified that Cook said that if there was a contract (collective-bargaining agreement) she no longer could be flexible on when she scheduled people. As concluded above, Heck impressed me as being a credible witness. Cook testified that during the meeting in question she discussed the enforcement of a longstanding policy, there was no reference to the Union, and she did not say that the hospital could not be flexible in the future regarding the application of the weekend policy if there was a union contract in effect. As indicated above, Sandusky filed a grievance in April 1993 (GC Exh. 295), in which she, in effect, alleges at least twice that Cook was not telling the truth about certain matters. As part of the resolution of that grievance, Cook had to present a written apology to Sandusky. In her June 1993 grievance (GC Exh. 297), Sandusky alleges that Cook made untruthful statements in her evaluation of Sandusky. As part of the resolution of that grievance (GC Exh. 299), Cook's evaluation, in effect, was to be disregarded and Sandusky, who received a merit increase, no longer reported to Cook. Such resolutions do not indicate management's total support of Cook. Cook did not impress me as being a credible witness. She had a track record coming into this proceeding. She is not the type of individual that I would want to rely on in determining who is telling the truth. Respondent violated the Act as alleged in paragraph 5(g)(v) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(g)(vi) of the August 11, 1995, amended consolidated complaint alleges that Supervisor Carol Young threatened employees with loss of benefits in the event the employees selected the Union as their collective-bargaining representative. As noted above, Sautel testified that during unit meetings Young told RNs that with the union everyone would have to pay dues, your jobs will be reevaluated, you will lose benefits, benefits, and everything will go back to zero, you will all start at zero regarding seniority and sick leave, and the RNs are likely to lose benefits. Young testified that she told the three RNs that benefits would be pretty much frozen and then negotiated and they could end up with more, the same or less; that she did not mention zero benefits and she did not say the if the Union won the election, the nurses would lose benefits; and that she did not say that negotiations would start at zero. On brief, Respondent contends that Sautel admitted that she uses the words "likely" and "could" interchangeably and that Young did not say nurses would end up with zero benefits or no benefits after collective bargaining. It is noted that after making these concessions on cross-examination, Sautel testified that Young did not say that the employees could improve benefits and Young did say that the employees would start at zero if the Union came in. For the reason set forth below I did not find Young to be a credible witness. On the other hand, Sautel impressed me as being a reliable witness. Her testimony on this point is credited. Respondent violated the Act as alleged in paragraph 5(g)(vi) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(h) of the August 11, 1995, amended consolidated complaint alleges that three named supervisors threatened employees that Respondent would sell and/or close its hospital and that the employees would lose jobs if the Union were selected as their collective-bargaining representative. As noted above, RN Grash testified that Cook said that "if the Union got in that they would close the hospital. That they had some 200 and some hospitals and they didn't worry about one." Cook denied making this threat. But as noted above, I do not find Cook to be a credible witness. On the other hand, Grash impressed me as being a credible witness. Respondent violated the Act as alleged in paragraph 5(h)(i) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(h)(ii) of the August 11, 1995, amended consolidated complaint alleges that Star Block threatened employees that Respondent would sell and/or close its hospital and that the employees would lose jobs if the Union were selected as their collective-bargaining representative. McDonald, as here pertinent, testified that Block said that she had talked to Vandewater when he was at the hospital and he said "that if the Union was voted in, he would sell the hospital, [a]nd . . . he had over a hundred hospitals and he would sell." Block denies making this statement. As found above, when she made this statement Block was a supervisor. Also as found above, and for the reasons given above, in my opinion Block was not a credible witness. McDonald, on the other hand, impressed me as being a credible witness and her testimony is credited. Respondent violated the Act as alleged in paragraph 5(h)(ii) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(h)(iii) of the August 11, 1995, amended consolidated complaint alleges that Robin Deusel threatened employees that Respondent would sell and/or close its hospital and that the employees would lose jobs if the Union were selected as their collective-bargaining representative. Twice in February 1994 Deusel made "administrative rounds" to units where she did not work. During these rounds she showed a strike video to employees. Two nurses on two different units testified that she made certain statements during these visits. More specifically, Blankenbaker testified that Deusel told her and other named nurses that they had to vote against the Union because if the Union got in, the only power the nurses would have would be to go out on strike and if that happened, Audubon may not be able to recover; and that Deusel said that if there was a strike, no patients would be admitted and if there were no patients, there would be no jobs. RN Nanz testified that Deusel said that if the employees did join a union, they would lose their benefits, the hospital did not have to negotiate with the Union, and the hospital would most likely close; and that Deusel said that the employees had no guarantees that they would have benefits if they went union, the hospital did not have to negotiate and most likely if the hospital went union the hospital would be sold. As noted above, Deusel denied these allegations. She also testified that she was impartial regarding unionization and she never told an employee how to vote. On cross-examination Deusel conceded that the video she was showing indicated that the employees should vote "NO" and she was not sure whether she wore a "Vote No" button. Deusel was not a credible witness. Both Blankenbaker and Nanz impressed me as being credible witnesses. Their testimony is credited. Respondent violated the Act as alleged in paragraph 5. (h) (iii) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(i) of the August 11, 1995, amended consolidated complaint alleges that Respondent by (1) Karen Puviance, (2) George Roth, and (3) Edie Harper at specified times in February 1994 discriminatorily enforced a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted. As noted above, Doyon testified about a copy of a prounion letter she kept posting on the refrigerator door in the nurses lounge in her unit and how Purviance took it down. Purviance testified that she removed all campaign literature that was on the refrigerator. This testimony was not refuted. Moreover, while Doyon testified that the refrigerator was used to post notices of

mandatory staff meetings or something important like fliers from the pharmacy and notices regarding infection control and new drugs, she did not testify that while Purviance took prounion literature off the refrigerator door, she left antiunion literature on the refrigerator door. It has not been shown that Respondent by Purviance discriminatorily enforced a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted. Consequently this portion of the August 11, 1995, amended consolidated complaint will be dismissed.

As noted above, Bagby testified that Roth took down a prounion letter she had posted on the bulletin board in the conference room in CCU and wadded it up; that at that time Roth did not remove the campaign literature of the NFN; and that when the NFN posted a letter the next day Roth, who saw them go into the conference room where the bulletin board is located, did nothing. Roth testified that he did not remove NPO literature from the involved bulletin board and he did not allow hospital or NFN literature to be posted in an area that was off limits to NPO literature. He also testified that he posted prohospital campaign literature on the involved bulletin board and it is common for him to crumple material when he throws it in a garbage can. The testimony of Bagby is credited. Roth conceded that he posted prohospital materials on the bulletin board. His assertion that the only material that he removed from this board was defaced material that he put up indicates that he removed material based on something other than whether it was in a patient care area. In removing material from this board he was assertedly relying on a subjective criterion. Admittedly, he, in effect, asserts that the criterion was only applied to material he posted on this board. But one must wonder if there is only enough room on this board for so many postings and Roth wanted to post something, would he only take down that which he posted to make room for the new posting. Since he took on the responsibility to post and to remove postings, and since he was in the habit of crumpling material before he threw it away, in my opinion Bagby's testimony is reliable. Respondent violated the Act as alleged in paragraphs 5(i) and (ii) of the August 11, 1995, amended consolidated complaint.

As noted above, Kleitz testified that she posted prounion literature on the bulletin boards in ER;[99] that subsequently she saw Harper take this literature off the bulletin board directly behind the nurses desk and later she saw that the prounion literature that she posted on the bulletin board in the nurses lounge had been taken down while all the antiunion literature remained on the board; that she went to Harper's office and asked her why she took the prounion literature down;[100] that Harper initially denied taking the literature down but when Kleitz told her more than once that she saw her do it Harper finally admitted it; that Harper said that she did it because she did not want any more "union stuff" in ER; and that Harper did not deny that she left the NFN literature on the bulletin boards. Harper testified that it was her understanding that campaign literature could not be hung in the patient care area during the campaign but it could be posted in a nonpatient care area; that no one told her that it was her job to enforce a rule prohibiting the posting of campaign literature in a patient care area; that the only board in the emergency room which was in a nonpatient care area was in the staff lounge; that she considered the three boards near the desks to be in a patient care area because they can be seen by the patients or their families who come to the desks; that she never removed any literature during the campaign from the lounge board; that she did remove literature during the campaign from one of the other bulletin boards in the patient care area of the ER and she threw the literature out; that she did not remember what the literature was but she remembered that there was no NFN literature on that board; and that subsequently Kleitz discussed the matter with her. On brief, Respondent contends that Kleitz exaggerated the situation. Harper was a supervisor at the time. Anderson testified that in January through March 1994, Harper was involved in disciplinary counseling and she formally evaluated employees as a part of the merit raise system. As noted, Harper admitted that she removed literature from a bulletin board but she testified that it was one of the boards in a patient care area. Respondent posted antiunion posters in areas frequented by patients, their friends and families and Respondent showed a strike video to nurses at nurses stations without regard, other than the time of the day when it was shown, to the fact that this area would be considered a patient care area, especially in labor and delivery where Deusel showed the video. Also, as Harper admits, no one told her that it was her job to enforce a rule prohibiting the posting of campaign literature in patient care areas. Perhaps an explanation for Harper's position that she did not want any more union literature in the ER, Kleitz' testimony is credited on this point, can be found in the fact that at one time Harper was on the NFN committee and, as testified to by Gravatte, who was the founder of NFN, when Harper was at work she put any handouts that NFN had in employees' mailboxes. Kleitz's testimony that Harper left NFN literature on the bulletin boards is also credited. As Harper testified the only board in the ER which was not in a patient care area was in the lounge. If NFN materials were left on the "boards" in the ER that would mean that some of it was left on a board or boards in-patient care areas. Respondent violated the Act as alleged in paragraphs 5(i) and (iii) of the August 11, 1995, amended consolidated complaint.

Paragraph 5(j) of the August 11, 1995, amended consolidated complaint alleges that Respondent by (1) Laura Wood, (2) Sandy Bishop, (3) Kay Kirby, (4) Robin Deusel, and (5) Karen Bender at specified times in February 1994 solicited grievances from its employees and promised to adjust them in order to discourage employees from supporting the Union. On brief, the General Counsel contends that managers made rounds which were not normally made, repeatedly asking nurses if they had any questions or problems they wanted to talk about; that Deusel told Blankenbaker that if she would get involved in the new committee the hospital was forming, she could "see things change"; that Wood told Stacy Doyon that a committee of staff nurses was being formed "addressing staff nurses concerns, kind of a communication network between the staff and the administration"; and that Kirby asked Gentry and other employees in her unit if they had any questions or concerns she could address, and when Gentry complained that the administration ignored staff nurses' suggestions, Kirby noted that Respondent "was attempting to change the committee policy and involve more staff nurses." Respondent, on brief, argues that the record is devoid of any evidence that nurse managers promised to remedy grievances but rather they merely solicited nurse concerns regarding a variety of issues before the Petition—as well as after; and that no evidence was elicited in support of the allegation against Bender. Inasmuch as there is no evidence in the record regarding Bishop and Bender as far as this alleged violation of the Act is concerned, the complaint to this extent will be dismissed. As indicated above, in my opinion Stacy Doyon was a credible witness

[99] As indicated above, Kleitz testified that there are three bulletin boards in the ER area; that all types of material is posted on these bulletin boards including antiunion material of the Nurses for Nurses (NFN).

[100] As indicated above, while Kleitz testified that Harper removed at least three pieces, her Board affidavit only refers to one piece of prounion literature being removed.

and Wood was not. Doyon's testimony that Wood mentioned a committee that was going to be made up of staff nurses addressing staff nurses' concerns, kind of a communication network between the staff and the administration, is credited. Vandewater accompanied by Wood during one of his tours asked Doyon if there are any problems. Vandewater then told Doyon and the other employees present that he felt that there was no need to speak with the Union. Wood then made her statement about the committee. In taking this approach Respondent solicited grievances from its employees and promised to adjust them in order to discourage employees from supporting the Union. Kirby testified that she engaged in a program which began during the union campaign whereby every 2 weeks she would make rounds to other units where she did not work to see if the employees had any questions; and that in the past she asked employees in her own unit if she could help them out or solve any problems that would make their job easier.[101] As noted above, I did not find Kirby to be a credible witness. As set forth above, Gentry testified that Kirby came to CCU and asked if the nurses had any questions about the union campaign or about the administration or anything; and that when she told Kirby that there were a lot of issues that had to be addressed collectively and the Union was the only way to address the situation, Kirby indicated that the administration was attempting to change the committee policy and involve more staff nurses. Gentry's testimony is credited. Kirby solicited grievances from Audubon's employees and told them that their concerns could be adjusted without the Union in order to discourage employees from supporting the Union. And finally, Deusel went to an area that she did not work in, labor and delivery, as part of the administrative rounds during the union campaign. There, according to the credible testimony of Blankenbaker, Deusel mentioned that a new committee was being formed and she encouraged the nurses present to get involved that way and see things change. Again, by Deusel Respondent solicited grievances from its employees and promised to adjust them in order to discourage employees from supporting the Union. Respondent violated the Act as alleged in paragraphs 5(j) (i), (iii) and (iv) of the August 11, 1995, amended consolidated complaint.

Paragraph 6 of the August 11, 1995, amended consolidated complaint alleges that about August 9, 1994, Respondent discharged or permanently laid off its employee Joanne Sandusky because she and other employees of Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities. On brief the General Counsel contends that Sandusky was an open and active union supporter during the organizing campaign; that Sandusky received assistance from the Union in the filing and processing of several essentially successful grievances; that 5 months after the representation election, the results of which were still contested, Respondent abruptly terminated Sandusky, an employee with over 19 years of tenure, under circumstances so unprecedented and harsh as to raise a strong inference of unlawful motive; that Respondent was unable to show that any other employee, in the absence of some sort of misconduct or other cause, had ever been terminated without any advance notice, without any effort to place the employee in another position in the hospital and escorted to the door with a security guard; that when Sandusky's previous position was eliminated she was reabsorbed into the unit staff without having to bid or apply for a position; that shortly after Sandusky's termination, Respondent eliminated a number of other nursing positions in the hospital and Long, one of the nurses affected, was given a list of jobs at Audubon as well as at other affiliated facilities from which she could select a position and transfer without suffering any break in her employment; that at the affiliated Suburban Hospital when the part-time lactation consultant position was eliminated, incumbent Debbie Moses continued working full time in another position until Suburban decided to recreate the lactation consultant position on a full-time basis and offered it to Moses; that when Pugh asked at a management meeting why Sandusky was not given the opportunity to apply for other positions "like just about everyone else is allowed to do," those present, including Riley and Johnson, the associate director of human resources who told Sandusky on August 9, 1994, that she had to start packing and get out of the building as soon as possible, said nothing; that in the past Riley had said in Pugh's presence that Sandusky was a "chronic complainer" and "part of the Union"; that events following her termination further support a finding that Sandusky was discriminated against because of her union activities in that when Sandusky applied for a staff nurse position in the intensive care nursery, the unit where she had been employed for 19 years, the position was inexplicably removed from the board after Sandusky was interviewed and then reposted 6 months later and filled without notifying Sandusky of the reposting; that when Sandusky applied for a position at Suburban she was summarily rejected despite her obviously high qualifications without even the opportunity for an interview; that Sandusky was treated this way because she was an open and active union supporter; that although what happened to Sandusky occurred after the election, the results of the election were not final and there were unfair labor practice charges as well as objections pending; and that by removing Sandusky from the unit, Respondent sought to quell employee's prounion sentiments, to demonstrate that it would get rid of prounion employees and to frighten and intimidate potential witnesses. Respondent, on brief, argues that despite the fact that Sandusky was very active in union campaigning through 1993, during the entire grievance process there were no discussions about Sandusky's union activity; that "[s]ecurity was called primarily because these individuals work for an outside contractor and are not employees of Audubon which, Wempe hoped, would lessen any embarrassment to Sandusky. Wempe also wanted to avoid having employees taken away form patient care duties simply to carry boxes to Sandusky's car"; that the General Counsel failed to prove a prima facie violation of Section 8(a)(3); that it is difficult to believe that, given the absence of any other alleged 8(a)(3) activity during the course of a long and aggressive card solicitation and election campaign, that Audubon would perceive a need to terminate a union supporter as an example to other union members, or that Sandusky would be the chosen target of such an exercise; that the timing of Sandusky's job elimination, 5 months after the election, compels the conclusion that Audubon's action in doing so was not motivated by her union activity; that assuming arguendo that prima facie case could be established, the record shows that the Hospital had legitimate nondiscriminatory reasons for eliminating the lactation consultant position in August 1994; that Suburban eliminated its lactation consultant position in July 1994; and that the General Counsel has failed to establish that Audubon's reasons for eliminating Sandusky's position are pretextual.

It does not appear that Riley attempted to refute Pugh's testimony that Riley had said that Sandusky was "part of the Union." As concluded above, Riley, in my opinion, was not a credible witness. She viewed Sandusky as "part of the Union" and Riley was upset with the above-described petition signed by over 100 of

[101] Her testimony regarding what was possible in other units is not credited. Her approach in CCU belies her assertion.

Audubon's nurses in support of Sandusky (GC Exh. 298). Riley was not upset because of any question of a breach of the confidentiality of the grievance process. Riley was upset because the petition in support of Sandusky was a demonstration of the willingness of over 100 of Audubon's nurses to engage in concerted protected activity in support of an "experienced and caring employee," Sandusky. From Respondent's point of view, Sandusky became the perfect target to set an example. Contrary to Respondent's assertions on brief, Wempe was not trying to lessen the embarrassment of Sandusky with the security guard escort; Wempe was making it as embarrassing as possible. Security guards are normally used to escort wrongdoers or security risks out of a building. And as to Respondent's argument that Wempe did not want to have employees taken away from patient care duties, it need only be noted that Wempe conceded that normally maintenance moves furniture or equipment in the hospital. Certainly Respondent is not arguing that having a maintenance person push the cart with Sandusky's boxes on it would be taking an employee away from patient care duties. By its handling of the posting of a job opening, interviewing Sandusky, then removing the posting, and later filling the position without telling Sandusky that the position was again posted, Respondent made it more than obvious that it did not want Sandusky as an employee.[102] If it took Sandusky back, the message to employees would be weakened if not lost. Respondent could not let that happen. While ostensibly encouraging her and telling Sandusky what she should do to obtain a position, Respondent was making sure that she would not work at Audubon. The recall rights Respondent ostensibly gave to Sandusky were meaningless for Respondent never intended to let her truly exercise those rights.[103] As pointed out by the General Counsel, Respondent was unable to show that any other employee, in the absence of some sort of misconduct or other cause, had ever been terminated without any advance notice, without any effort to place the employee in another position in the hospital, and escorted to the door with a security guard. Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has demonstrated that Sandusky engaged in extensive and open activity in support of the Union, that Respondent knew, as Riley put it, that Sandusky was "part of the Union" and there is antiunion animus on the part of Respondent. The General Counsel has made a prima facie showing sufficient to support the inference that protected activity was a motivating factor. On the other hand, Respondent has failed to persuade by a preponderance of the evidence that it would have taken these same actions even in the absence of Sandusky's union activity. Respondent violated the Act as alleged in paragraph 6 of the August 11, 1995, amended consolidated complaint.

Paragraph 7 of the August 11, 1995, amended consolidated complaint alleges that the following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Registered Nurses, including Pool Registered Nurses, employed by Respondent at its facility at One Audubon Plaza, Louisville, Kentucky, but excluding all other employees, all other professional employees, all technical employees, all business office clerical employees, all skilled maintenance employees, all physicians, all nonprofessional employees and all guards and supervisors as defined in the Act.

The General Counsel, on brief, points out that in January 1994 Respondent stipulated that the unit alleged here was appropriate for collective bargaining. The General Counsel contends that the Supreme Court, in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991), approved the Board's final rule on collective-bargaining units in the health care industry which found that a unit of all registered nurses in an acute care hospital setting was appropriate for collective-bargaining purposes absent "extraordinary circumstances"; that Respondent did not make any attempt to establish that there are any extraordinary circumstances here which would render the unit inappropriate; that while Respondent, relying on *NLRB v. Health Care & Retirement Corp*., 511 U.S. 571 (1994), contends that practically all of its registered nurses are supervisors within the meaning of Section 2(11) of the Act, this decision does not lend any support to Respondent's contention;[104] that Respondent did not present any evidence that the registered nurses here have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees or to adjust their grievances, or to effectively recommend such action; that although Respondent did present sparse evidence that some of the registered nurses did direct and assign employees certain tasks in connection with their status as a registered nurse, such routine assignments and directions fall short of establishing the use of independent judgment necessary to confer supervisory status; that the fact that registered nurses may determine that a particular patient should be ambulated more frequently or have vital signs taken more frequently and that this determination would result in the aide assigned to that particular patient carrying out those duties, does not mean that the registered nurse is exercising independent judgement in the assignment or direction of the aide's work for as the Board pointed out in *Providence Hospital*, 320 NLRB 717, 728 (1996).

> [W]hen a professional gives directions to other employees those directions do not make the professional a supervisor merely because the professional used judgment in deciding what instructions to give. For example, designing a patient treatment plan may involve substantial professional judgment, but may result in wholly routine direction to the staff that implements that plan.

that clearly not all assignments and directions given by an employee involve the exercise of supervisory authority; that as pointed out by the court in *NLRB v. Security Guard Service*, 384 F.2d 143, 151 (5th Cir. 1967).

> [i]f any authority over someone else, no matter how insignificant or infrequent, make an employee a supervisor, our industrial composition would be predominately supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car [;]

that here any authority the RNs have to assign or direct other staff members does not require the use of independent judgment within

[102] Interestingly Respondent argues that the position was not filled until April 1995, after the ICN census had sufficiently increased to warrant a new position. Respondent specifies that the October and November 1994 pertinent average daily census was eight. When the position was posted the average daily census was 12, and the average daily census for 1994 was 12 to 14. But the average census in ICN rose to 16 in January 1995 and it remained a constant 12 to 14 for the next 4 months. Consequently it seems that the census had sufficiently increased to warrant a new position long before April 1995.

[103] In view of her treatment by sister hospital Suburban, it appears that this applied with respect to Audubon and its affiliates.

[104] Sec. 2(3) of the Act excludes from the definition of "employee" any individual employed as a supervisor.

the meaning of Section 2(11) of the Act; that the Court in *NLRB v. Health Care & Retirement Corp*., supra, made clear that its decision was in no way an infringement on the Board's interpretation of Section 2(11) of the Act, other than the specific phrase "in the interest of the employer" on which the Board had previously relied in finding RNs and others not to be supervisors in health care facilities; that in *Providence Hospital*, supra, the Board had the opportunity to address RNs in a hospital setting in light of the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp*., supra; that in *Providence Hospital*, supra, the "charge nurses" in question had as much, or more, authority than the administrative record reveals for any of the RNs at issue in that the charge nurses in that case had the authority to assign employees to patients, monitored the arrival time of other employees to verify attendance, called in replacement employees if the need dictated, requested nurses to work overtime, coordinated patient care within their areas of responsibility, monitored other employees' skills and performances, evaluated other staff members, and served on panels evaluating applicants for employment; that the Board in *Providence Hospital*, supra, found that such assignments and directions were routine in nature and that they were not supervisors within the meaning of Section 2(11) of the Act; that any assignments or directions the RNs here may give other employees appear to be routine in nature and do not require the use of independent judgment as contemplated in Section 2(11) of the Act; and that the RNs at issue here are not supervisors within the meaning of Section 2(11) of the Act.

The Union, on brief, argues that Respondent waived its right to raise the supervisory status of RNs when it freely stipulated that the RNs were an appropriate bargaining unit of employees under the Act since the law in the Sixth Circuit, rejecting the Board's "in the interest of the employer/in the interest of patient care analysis," has not changed in over 9 years, *NLRB v. Beacon Light Christian Nursing Home*, 825 F.2d 1076 (6th Cir. 1987); that the general rule is that stipulations are conclusive on the parties absent changed circumstances and no changed circumstances exist in the Sixth Circuit; that although *NLRB v. Health Care & Retirement Corp*., supra, changed the Board's reliance on the "in the interest of the employer/in the interest of patient care" test for determining the supervisory status of nurses, it did not change the law in the Sixth Circuit; that *NLRB v. Health Care & Retirement Corp.*, supra, did not hold that all RNs are statutory supervisors; that here the RNs are nonsupervisory professional employees entitled to the protection afforded professional employees under Section 2(12) of the Act;[105] that the Act defines a professional employee as one whose work involves the exercise of judgment and discretion; that this exercise of professional judgment, however, does not make one a supervisor in that only when an employee exercises independent judgment in the exercise of Section 2(11) activity is the employee a statutory supervisor; that in this case the Respondent confuses supervisory authority with professional responsibility; that as pointed out by the Board in *Sunset Nursing Homes*, 224 NLRB 1271 (1976), job descriptions are not conclusive concerning the actual job and one must look at the actual duties performed; that a review of Respondent's job descriptions shows that all the listed activities deal with nursing techniques and procedures as applied to patients according to the guidelines set forth by standards of care and nursing policy and procedures; and that as the testimony showed, the supervision of new graduates, LPNs and nonlicensed nursing staff concerns professional direction, not Section 2(11) statutory authority.

Respondent, on brief, contends that almost all Respondent's RNs are supervisors under the Act; that Respondent had a right to elicit testimony on the supervisory issue notwithstanding its above-described 1994 stipulation regarding the unit; that the Court in *NLRB v. Health Care & Retirement Corp*., supra, under circumstances similar to those presented here, recognized that nurses are indeed supervisors within the meaning of the Act; that nearly all of Respondent's RNs are supervisors because they (1) have authority to assign and responsibly direct less-skilled employees, (2) exercise that authority through the use of independent judgment, and (3) hold authority in the interest of Audubon by virtue of their responsibility for assigning and directing employees in patient care; that given the absence of an appropriate bargaining unit the complaint should be dismissed; that almost all of Audubon's RNs responsibly direct the work of less-skilled employees using independent judgment; that the Board's recent *Providence Hospital*, supra, decision is not dispositive to the instant proceedings because there the situation involved the authority exercised by charge nurses over staff RNs and in the instant proceeding it involves the authority exercised by nearly all of Audubon's RNs, charge or staff, over less-skilled employees in the provision of patient care; and that in responding to the false dichotomy rejected in *NLRB v. Health Care & Retirement Corp.*, supra, the Board has created another false dichotomy between Section 2(11) and (12) where none exists.

The Board, in *Providence Hospital*, supra at 727–733, indicates as follows:

> As both the Board and the courts have recognized, not every act of assignment even of employees constitutes statutory supervisory authority. As with every supervisory indicium, assignment must be done with independent judgment before it is considered to be supervisory under Section 2(11). Thus, routine or clerical assignments are not supervisory; only those requiring the exercise of independent judgment are. Although the test is easily stated, application often depends on a careful analysis of the facts of each case. In doing so the Board and the courts have followed certain guiding principles. For example, work assignments made to equalize employees' work on a rotational or other rational basis are routine assignments; assignments based on assessment of employees' skills when the differences in skills are well known, have been found routine; asking, without authority to require, employees to come in early or work late is routine; and adjusting em-

[105] Sec. 2(12) of the Act reads:

(12) The term "professional employee" means

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

> ployees' schedules to meet the vagaries of manpower needs is not necessarily supervisory.
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> when a professional gives directions to other employees, those directions do not make the professional a supervisor merely because the professional used judgment in deciding what instructions to give. For example, designing a patient treatment plan may involve substantial professional judgment but may result in wholly routine direction to the staff that implements that plan. Independent judgment must be exercised in connection with the Section 2(11) function if the actor is to be deemed a statutory supervisor; use of judgment in related areas of a professional or technical employee's own work does not meet the statute's language.
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> Since the enactment of Section 2(11), the Board has, with court approval, distinguished supervisors who share management's power or have some relationship or identification with management from skilled nonsupervisory employees whose direction of other employees reflects their superior training, experience, or skills.
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> the "essence" of the job of all RNs, and not just charge nurses, is "judgment." The evidence in this case demonstrates that all RNs, in whatever their capacity, regularly exercise judgment as professional employees that differs little in effect from any additional authority exercised by RNs when serving as charge nurses. As explained above, the essence of professionalism requires the exercise of expert judgment and the essence of supervision requires the exercise of independent judgment. And as detailed below, the alleged supervisory independent judgment of charge nurses when examined in detail becomes indistinguishable from the professional judgment exercised by all RNs.
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> At the beginning of a shift, charge nurses assign patients to employees based on the needs and acuity of the patients and the skills of the staff. Charge nurses may also look at the mix of staff—i.e., that number of RNs, LPNs, and aides available—and which patients RNs have had the day before.
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> Typically, in all centers, the RN asks the charge nurse if it is a good time to take a break. Depending on the need for the RN to cover other patients, the charge nurse will approve or disapprove the break.
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> Although the evidence regarding charge nurses' assignments is largely limited to staff RNs, there is some evidence as to their assignment of LPNs and aides, but most often that depends on the number of LPNs and aides present at any one time. [731]
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> Charge nurses' daily assignments do not require any independent judgment that goes beyond the professional judgment exercised by all RNs. Such assignment does not involve the independent judgment required of a supervisor.
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> Charge nurses monitor other employees skills and performances, intervene in the case of serious problems in procedures, patient care, or customer relations, and report lesser problems in the end-of-shift reports. On occasion, they have intervened in disputes between staff RNs over patient assignments. Staff RNs, however, are also expected and required to report any problems in the care given patients. There is evidence that staff RNs have done so and have personally intervened, including an RN who reported deficiencies in a charge nurses' performance. This is part of their professional responsibility. As one staff nurse testified, "As nurses we learn right off the bat in nursing school that you are first and foremost a patient advocate."
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> Charge nurses have also served on panels evaluating applicants for employment, but it is unclear whether this is in a charge nurse or RN capacity.
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> we conclude that the record has failed to establish that the RN charge nurses are supervisors within the meaning of Section 2(11) of the Act. Accordingly, they are included in the petitioned-for unit and are eligible to vote in the election. [Footnotes and citations omitted.]

The RNs at issue here are not supervisors within the meaning of Section 2(11) of the Act. The evidence of record regarding this issue is summarized above and in some of the footnotes in Appendix A. None of the RNs in the unit described above are involved in the hiring, transferring, laying off, recalling, or adjusting grievances. They do not have the authority to reward or promote or to effectively recommend those actions. And they do not have the authority using independent judgment to suspend, discharge, discipline, or to effectively recommend that action. The functions that they perform beyond the patient care they themselves render appear to be routine in nature and do not require the use of independent judgment as contemplated in Section 2(11) of the Act. The involved assignments of patients in situations such as the one at hand are as, pointed out in *Providence Hospital*, supra, routine functions and do not require the exercise of independent judgment. Similarly, the role that the charge nurse plays in breaks has not been shown to be other that routine and lacking in independent judgment. And while as Margaret Kelly testified, as a charge nurse in 1993 she could call people into work for the next shift, it was not shown that she could compel them to come to work if they were not scheduled to come to work. As the General Counsel points out, in *Providence Hospital*, supra, the "charge nurses" in question had as much, or more, authority than this record reveals for any of the RNs at issue. And yet the Board concluded that the nurses in question *in Providence Hospital* were not supervisors. Whether Respondent agrees with the Board's approach in *Providence Hospital*, supra, is of no consequence. It is Board law. The RNs involved here, including the designated charge nurses as they functioned up to the time of the demand for recognition, are properly included in the unit set forth above. They are professionals. They have not been shown to be supervisors within the meaning of the Act. The Kentucky board of nursing laws do not indicate that under the National Labor Relations Act Kentucky RNs are supervisors. Indeed the Kentucky board of nursing is precluded by law from reaching such a conclusion. The National Labor Relations Board, subject to judicial review, makes this determination.

Paragraph 8 of the August 11, 1995, amended consolidated complaint alleges that (a) from about June 1991 to about January 5, 1994, a majority of the unit, by executing authorization cards, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent and, (b) at all times since January 5, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. The General Counsel, on brief, points out that in *NLRB v.*

Gissel Packing Co., 395 U.S. 575, 606–607 (1969), the Supreme Court, in considering the validity of authorization cards, held:

> [E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election.

The General Counsel contends that the fact that employees may have been informed that the cards could be used to get an election does not prevent their use in establishing the Union's majority status; that there is no requirement that card solicitors have to affirmatively restate the purposes of the cards and the fact that they told the signers that a purpose of the cards was to secure a Board election did not negative the overt action of the employees in signing cards designating the Union as their bargaining agent; that declarations to employees that authorization cards are desired to gain an election do not under ordinary circumstances constitute misrepresentations either of fact or of purpose; that the fact that employees are told in the course of solicitation that an election is contemplated or that a purpose of a card is to make an election possible is insufficient basis for vitiating unambiguously worded authorization cards, *Levi Strauss & Co.*, 172 NLRB 732 (1968); that a solicitor does not invalidate a card for use to establish majority representation by stating that if enough employees signed cards there will be a vote or election, *Cumberland Shoe Corp*., 144 NLRB 1268 (1963); that all of the cards in this case constitute valid designations of the Union as the collective-bargaining representative of the employees; that there is no probative evidence that any of the card signers were informed by representatives of the Union to ignore the stated purpose of the cards or that it was *only* for the purposes of seeking an election (emphasis in original); that there is nothing wrong with solicitors telling signers that the card did not mean they were joining the Union for that was the case since the cards have nothing to do with union membership; that while it is anticipated that Respondent will argue that some of the card signers were told by a card solicitor that the card would *only* be used to obtain an NLRB election, such testimony was given in response to leading questions, referred to a prior card not signed in the period involved here, the signer read the card and was not told anything inconsistent with what was on the card, and some were not credible witnesses; that the signers were being asked by Audubon to acknowledge their support for the Union in a proceeding at which their Employer was barring no expense to avoid being ordered to bargain with the Union; that it is not surprising that at least a few of the RNs attempted to disavow any understanding of what the authorization cards meant; that those who were allegedly told that the card was to receive more information about the Union were not told by the card solicitors that this was the only purpose of the card; that this again is not a misrepresentation "calculated to direct the signer to disregard and forget the language above his signature," *NLRB v. Gissel Packing Co*., supra; that the record does not support discounting the cards of three individuals, Tammy McClanahan, Kathy Stoess, and Tammy Taylor, regarding being told "so we could vote" because there are credibility questions regarding the first two and the last testified that it was her friends and not union representatives who spoke to her; that the General Counsel introduced authorization cards from 347 employees who were employees in the bargaining unit in January 5, 1994, whose cards were dated within the 1-year period immediately preceding that date; that 15 additional card signers should be counted towards the Union's majority; that the Board in *Surpass Leather Co*., 21 NLRB 1258, 1273 (1940), held that "[i]n the absence of further proof of desires concerning representation of the employees whose cards are in evidence, only signed cards dated within a reasonable time prior to the dates on which the . . . [Union] alleges the respondent refused to bargain with it, can be accepted by us as evidence of designation of the . . . Union by such employees"; that as noted by the judge in *Blade-Tribune Publishing Co*., 161 NLRB 1512, 1523 (1966), "[t]he Board did not define the term 'reasonable time.' It would appear from *Luckenback Steamship Co*., 12 NLRB 1330, 1343–1344 (1938), that a 1-year period is considered to be a reasonable time"; that the card of Rhonda Stone, dated January 3. 1993, should be counted; that the in view of the length of the involved campaign it was necessary for the Union to seek reaffirmations from early card signers and because of the difficulty of keeping track of whose cards had become stale in a unit so large it is submitted that cards dated within 2 months of the 1-year period should be counted towards the Union's majority;[106] that Gloria Coleman's card, which assertedly was signed within the reasonable period of time, should be counted because although she testified that she was last employed "full time" at Respondent in December 1992, the unit includes non-full-time employees and Respondent clearly regarded her as employed in the unit as of the refusal to bargain date since she is listed on the list provided by Respondent (GC Exh. 2); that the cards signed by a number of other employees[107] should be counted towards the Union's majority since the cards signed after January 5, 1994, namely in January and February 1994, provide "further proof of [the employees'] desires concerning representation," eliminating any doubt that the employees' support for the Union as evidenced by their earlier-signed cards was continuing as of January 5, 1994, *Surpass Leather Co*., supra at 1273; that the card Judy Slaton signed on January 9, 1994, should be counted because she testified that she was still employed as a RN at Audubon and she had signed another card a couple of years before; that the card Selma Becht signed on January 15, 1994, should be counted because she testified that she was still employed by Audubon and had been for nearly 4 years; that the card Linda Lowe signed on January 7, 1994, should be counted because she testified that she was employed as a staff nurse by Respondent from August 1986 until September 1994 or 1995 and she also signed a card on October 10, 1992; that Slaton, Becht, and Lowe were employed in the unit on the refusal-to-bargain date and on the date on which they signed their cards; that the card of Vanaja Selvaraj should be counted even though the card itself has been lost because the signer's testimony that he or she signed a card is sufficient to support the counting of that card towards majority even where the card has been misplaced, *Q-1 Motor Express*, 308 NLRB 1267, 1279 (1992), enfd. 25 F.3d 473, 480 (7th Cir. 1994); and that a clear majority—at least 363 in a unit of no more than 642—of employees in the bargaining unit have been shown to have designated the Union as their collective-bargaining representative, and thus the Union's majority status has been convincingly demonstrated.

Respondent, on brief, argues that at least 34 specified cards were procured following assurances that the card would only be used to

[106] The cards of Jacqueline Bourke, Connie Branham, Joan Driscoll, and Darlene Johnson fall into this category.

[107] Cheryl Glisson, Pamela Kelly, Karen Kuban, Margaret Metzger, Melody Reibel, and Kathy Stoess.

obtain a Board-supervised election; that at least 11 cards were procured after assurances that the signer was not obligated to join the Union or would not be taking a definitive position regarding the Union by signing such card; that nine specified signers were led to believe that the card was simply a means to obtain information about the Union; that two employees were told that they had to sign the card in order to be able to vote; that designated charge nurse Maggie Kelly solicited authorization cards from specified employees;[108] that cards were solicited from employees who were not part of the bargaining unit at the time of solicitation, namely Sherria Young, who was a PCA in April 1993, did not have even a temporary license at the time and did not graduate form nursing school until May 1994, and other specified employees who at the time they signed cards were nurse externs and therefore could not be part of a professional unit of RNs without the specific approval of the RNs which is absent here since nurse externs cannot be considered professionals under Section 2(12) of the Act because, unlike RNAs they have not completed their course of study nor obtained a permit to practice as a professional RN or RNA; that nurse externs do not share a commonality of interest with RNs or RNAs, *St. Elizabeth's Hospital of Boston*, 220 NLRB 325, 326 (1975); that a number of the cards were obtained after the Union's request for recognition on January 5, 1994;[109] that the alleged bargaining unit contained approximately 642 employees and, therefore, in order to establish majority status sufficient to support a bargaining order, 322 current authorization cards are necessary; that of the 369 authorization cards, including the missing card of Selvaraj, introduced herein—only 366 of which were solicited from unit employees[110]—51 cannot be counted because they were obtained due to misrepresentation from card solicitors, 10, as noted above, were solicited by a designated charge nurse, 5 were solicited from employees who were not in the unit at the time, 8 cards are "stale" in that they are more than 1 year old, and the involved campaign was not interrupted by the filing and processing of an unfair labor practice charge,[111] and 12 cards were executed after the demand for recognition and should not be counted, *Tall Pines Inn*, 268 NLRB 1392, 1407 (1984).

Before deciding whether a majority has been demonstrated by the cards received herein, the size of the unit must be determined. Both the General Counsel and Respondent have settled on 642 as the approximate number of employees in the involved unit. It appears that both are relying on the list which was produced by Respondent and received here as General Counsel's Exhibit 2. The list contains the names and positions of 663 individuals. General Counsel and Respondent stipulated that 21 of the individuals were, at the time involved, mobile RNs who were temporary employees and not included in the unit.[112] This would reduce the number to 642. Also at the outset of the hearing herein Respondent stipulated, with respect to the list it provided of RNs as of January 5, 1994, that five of the individuals on the list, namely Kimberly Blair, Mary Block, Linda Borders, Edith Harper, and Ann Marie Powell, were supervisors effective on May 23, 1994, the date of the decision of the Supreme Court in *NLRB v. Health Care & Retirement Corp*., supra. In other words, Respondent is taking the position that these five individuals would only be considered supervisors after the May 1994 Supreme Court decision. The five did not become supervisors because of the Court's decision. The Court rejected the approach which the Board took in that and similar cases. But the Court did not take any action which would have transformed these five individuals into supervisors. If as Respondent stipulated, they were supervisors after the Court's decision, then they were supervisors before the Court's decision. Accordingly, they will be excluded from the unit. Consequently we are dealing with a total of 637.

Certain of the cards described in Appendix A hereto were received with the understanding that they would be authenticated by a comparison with genuine signatures of the involved individuals. Taking this approach, it is my opinion that the cards received as General Counsel's Exhibits 34 (Hughes, D.), 421 (McAfee, C.), 40 (Slayton, K.), and 44 (Westfall, G.) are authentic.

As was pointed out by the Court in *NLRB v. Gissel Packing Co*, supra at 606 and 608

> [E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election.
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> We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union particularly where company officials have previously threatened reprisals for union activity in violation of . . . [Section] 8(a)(1). Footnote omitted.]

Taking Respondent's contentions first, with respect to its argument that at least 34 specified cards were procured following assurances that the card would "only" be used to obtain a Board-supervised election, it is noted that (1) Theresa Jordan gave this testimony in answer to a leading question, she could not identify who told her this, and she testified that no one told her that the card was for some purpose inconsistent with what the card says; (2) Pam Hurley testified that she did not read the card and Hodges credibly denied telling Hurley that the card was only to get an election; (3) Barbara DeFerraro's testimony that she did not read any of the five cards that she signed makes her an unreliable witness, her testimony

[108] It is noted that while Respondent brought out on the cross-examination of Kelly the fact that she was a designated charge nurse during 1993, this was not raised as an objection to the cards that she sponsored. They have been received in evidence. Additionally, for the reasons specified above. In my opinion Kelly was not a supervisor when she solicited the involved authorization cards.

With respect to the card which Cheryl Glisson signed allegedly after being told to sign it by designated charge nurse, Linda Richeson, it is noted that the card is dated 11/29/92. Obviously it was introduced here as a standard of comparison. As concluded here, Glisson signed a card on January 6, 1994. The 11/29/92 card will not be considered in determining whether there is a majority. So whether the signer was told to sign the card is not relevant. It would appear, however, that such testimony is suspect if Glisson was not going to voluntarily sign in view of the fact that she subsequently signed a card and she did not testify that this was done on an involuntary basis.

[109] Respondent concedes that in most of the cases these cards support cards signed more than a year prior to the demand for recognition.

[110] As stipulated, Chris Ballard and Mary Street are mobile RNs and therefore not in the unit. Assertedly the card of Theresa Vincent cannot count toward majority status since the General Counsel failed to show that she was a member of the bargaining unit as of January 5, 1994.

[111] *Blade Tribune Publishing Co*., 161 NLRB 1512 (1966), revd. On other grounds 180 NLRB 432 (1969).

[112] Accordingly, the cards of Chris Ballard and Mary Street will not be considered further.

about the use of the word "only" was in response to a leading question, and she qualified the response testifying that she was told that if enough cards were signed there could be a vote; (4) Mary Pawley answered a leading question framed with the words "just to" and she testified that no one told her to ignore what was written on the card or said anything inconsistent with what was on the card; (5) Rebecca Sayers answered a leading question about the only reason or the only purpose, Margaret Kelly credibly denied Sayer's assertion, Sayers at one point testified that she could not remember what happened before she signed which card, and Sayers could not even remember signing another card until she was shown the card; (6) Karen Kuban was asked leading questions on this point and she subsequently testified that she was not told to ignore the language on the card and she was not told anything inconsistent with it; (7) Rita McCubbin was asked a leading question on this point and she could not recall who might have told her the purpose of the card; (8) Tammy McClanahan was asked a leading question on this point, and at one point she testified that she was mislead or she misunderstood; (9) Diane Bielefeld was asked a leading question on this point and even then she subsequently qualified her response; (10) Theresa Browning was asked a leading question on this point, and she testified that she was not even sure if she read the card before signing it; (11) Liza Zottman-Dixon was asked a leading question on this point, and she subsequently testified that Pitts merely said "do you want to sign the card or not"; (12) Jaqueline Bass testified that she was told that the purpose of the card was to see whether we could be represented and that was the only purpose the card was for; (13) Sandra Carter testified, with respect to what she was told the card was for, that "just that it was for—to be—for the hospital to be able to have a vote" and "just what I told you before, that, you know, it was for the hospital to be able to have a vote for the union"; (14) Tana Scott Bulus answered "No" to Respondent's question. "[D]id she [Kleitz] say that the purpose for which the card would be used would be for any reason but to petition for an election"; (15) Michele Hicks did not testify that she was told that "the card would 'only' be used to obtain a Board-supervised election"; (16) Linda Hibbs testified that Pate told her that "signing the card did not mean that I was asking for the Union to represent me, only that we would have enough signatures to get a vote, and then, after that, because you signed the card you didn't' have to vote for the Union," she, Hibbs, read the card before she signed it and she was not told to ignore the language on the card; (17) Margaret Sullivan responded to a leading question on this point, she testified that she probably read the card before signing it and she was not told to ignore what was printed on the card, and Jeff Tallant credibly testified that he did not tell Sullivan that the only purpose of the card was to get an election; (18) Carrie Shelburne changed her testimony about when Pitts told her "just to" and then she changed her testimony again and alleged with respect to her 1993 card that Doyle was the one who said "just to" with respect to the 1993 card; (19) Susan Keeler testified that she was told that the purpose of the card was to call for an election but she could not recall who said this; (20) Debbie Humpress testified that Doyle told her that the card was "just to get a vote, to be able to get a vote," she did not remember if she read the card before signing it, and Doyle did not tell her to ignore the language on the card;[113] (21) Leda Sharp eventually testified that she could be mistaken about exactly what was said regarding the purpose of her 1993 card; (22) Jean Skrine testified that she was told that by signing the card she was not committed to anything and she was not sure if she read the card but "[i]f I didn't' read it, . . . [it] would have been pretty stupid on my part"; (23) Judy Jones testified that when she testified about being told "only" she may have been referring to the 1991 card she signed and not her 1993 card and she originally gave the "only" testimony in response to a leading question; (24) Maria Bishop initially testified "Yes" to Respondent's counsel's question "[D]id she [Doyle] tell you that that was the only thing the card would be used for, to get a vote" but later Bishop testified that she remembered nothing about her conversation with Doyle, then in response to a question of Respondent's counsel she agreed that she had originally testified "Yes," then she testified that she remembered nothing about the conversation with Doyle and finally she testified, in response to Respondent's counsel that she could not say for sure that Doyle said "only"; (25) Tina Franke answered "Yes" when one of Respondent's counsel asked her "[D]id . . . [Hodges] tell you that the card would only be used to petition for a vote," then she testified that Hodges came in and asked if anybody would sign a card to allow the Union to come in and petition for a vote, and that was the end of the conversation, and subsequently Hodges credibly denied telling Franke that the card would only be used to petition for a vote; (26) William Owen testified that he could not recall who said the card was "just to , to give the Union a chance . . . for an election," then he testified "Yes" to Respondent's counsel's question ". . . the only thing you were told by an NPO supporter prior . . . [to the time he signed the November 1993 card] was that the only purpose for which those cards would be used, would be to petition for an election at the hospital," and then he testified that he could not remember what words were used when they talked about the card being used for an election; (27) Linda Lowe testified that she asked Margaret Kelly if by signing the card she was signing yes she wanted a union and Kelly said "Well, no, it's just in order to get the NLRB to set up a vote for us," she read the card before signing it and no NPO supporter, including Kelly, ever told her to ignore the language on the card; (28) Ann Reichie (Ratcliff) testified she was concerned about whether she would be obligated to vote for the Union and Hurst told her that "they just needed . . . cards . . . to have an election," she read the card before she signed it and Hurst did not tell her to ignore what was printed on the card; (29) Ann Fenzel testified "Yes" when asked by one of Respondent's counsel "[d]id . . . [Anna Long] tell you that an election was the only thing the card would be used for," then when asked again by one on the counsel for Respondent whether Long said that an election was the only purpose of the card Fenzel testified that she did not recall since the conversation occurred several years before the hearing; (30) Leslie Eyre (Cooms) testified that she could not recall what Kleitz told her word for word about the card, Kleitz said the card was to have a vote; (31) Jean King testified "Yes she . . . said that's all it meant" when one of Respondent's counsel asked her "[d]id . . . [Flener] tell you that was the only purpose of the card, to—get an vote" and later she testified that Flener told her that her card needed to be updated because it was only good for a year and that was all that was said; (32) Jerry Finerty testified "Yes" when asked by one of Respondent's counsel "[a]nd Ms. Rice and/or Ms. Pate advised you to sign the card so that you could get an election . . . [i]n fact, that was all they said the purpose of the card was for, correct," and he read the card before he signed it and he was not told to ignore the language on the card; (33) Cecilia Burba testified "Yes" when asked by one of Respondent's counsel "And she [Kleitz] said that was the only reason [to get additional cards in order to petition for an election] why she needed . . . [Burba's] signature on the card," and Kleitz credibly

[113] Doyle testified that she told Humpress that it was an authorization card for the NPO to represent the nurses.

testified that she did not tell Burba that the only purpose of the card was to get an election; and (34) Susan Grace gave the following testimony when questioned by one of Respondent's counsel:

> Q. [D]id you have any discussion with Ms. Patterson prior to you signing the card?
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> A. I asked what it meant to sign the card. And she said that it gave the Union the right to come in and take a vote.
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> Q. Is that the only thing you remember her saying concerning the purpose for the card?
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> A. Yes.

The page on which this portion of Grace's testimony is found is cited by Respondent on brief to support its argument that at least 34 specified cards were procured following assurances that the card would "only" be used to obtain a Board-supervised election. A reasonable reading of this testimony in no way supports the argument of Respondent that Grace was assured that the card would "only" be used to obtain a Board-supervised election. As noted above, this was not the only time this approach was taken. As contended by the General Counsel on brief there is no probative evidence that any of the card signers were informed by representatives of the Union to ignore the stated purpose of the cards or that it was "only" for the purposes of seeking an election. Also as anticipated by counsel for the General Counsel while Respondent argues that some of the card signers were told by a card solicitor that the card would "only" be used to obtain an NLRB election, such testimony was given in response to leading questions, referred to a prior card not signed in the period involved here, the signer read the card and the signer was not told anything inconsistent with what was on the card, and certain of the signers were not credible witnesses. Respondent has failed to show that anything was said to the involved signers which would foreclose use of these cards for the purpose designated on the cards face.

Next, Respondent contends that 11 cards should not be counted because the cards were procured after assurances that the signer was not obligated to join the NPO or would not be taking a definitive position regarding the NPO by signing such card. As pointed out by counsel for the General Counsel on brief, there is nothing wrong with solicitors telling signers that the card did not mean they were joining the Union for that was the case since the cards have nothing to do with union membership.

Next, Respondent contends that nine specified signers were led to believe that the card was simply a means to obtain information about the Union. Even if this were true, it is not the equivalent of telling a signer that the only purpose of the card is something other than what is stated on the face of the card. This is an insufficient basis for vitiating unambiguously worded authorization cards. On brief, Respondent argues "[i]t is apparent that these individuals did not desire to join the Union, nor did they comprehend the obligation inherent in signing the card—the solicitor did not convey the significance of signing in this context either." No authority is cited for the proposition that the solicitor is obligated to explain the significance of signing the card. As pointed out by counsel for the General Counsel those who were allegedly told that the card was to receive more information about the Union were not told by the card solicitors that this was the "only" purpose of the card and this is not a misrepresentation "calculated to direct the signer to disregard and forget the language above his signature," *NLRB v. Gissel Packing Co.*, supra.

Next, Respondent contends that two employees were told that they had to sign the card in order to be able to vote. Tammy McClanahan testified that she told counsel for the General Counsel that she, McClanahan, was either misled or misunderstood the purpose of the card. Since she conceded that it was possible that there was a misunderstanding on her part, her testimony about being told that she had to sign the card in order to be able to vote cannot be the basis for finding that she was definitely told this. Her card should be counted, While Mary Potter seemingly corroborated Kathy Stoess, Potter, who asserted that she remembered the exact words, changed the wording at least three times and eventually conceded that she did not overhear the full conversation at issue. Doyle impressed me as being a credible witness. It appears that Stoess misunderstood Doyle. Stoess' testimony is not credited.

Next, Respondent contends that cards were solicited from employees who were not part of the bargaining unit at the time of solicitation, namely Sherry Young, who was a PCA in April 1993, did not have even a temporary license at the time, and did not graduate from nursing school until May 1994, and other specified employees who at the time they signed cards were nurse externs and therefore could not be part of a professional unit of RNs without the specific approval of the RNs which is absent here since nurse externs cannot be considered professionals under Section 2(12) of the Act because, unlike RNAs they have not completed their course of study nor obtained a permit to practice as a professional RN or RNA; and that nurse externs do not share a commonality of interest with RNs or RNAs. Young testified that when she signed the card human resource person Fran Taylor and manager Joan Wempe told her that she was going to be a RNA at Audubon. Neither Taylor nor Wempe deny this. Young is included on the list given by Respondent to counsel for the General Counsel of the "TOTAL RN STAFF as of 1/5/94" (GC Exh. 2). Young's card will be counted. Four of the individuals who signed cards were included on Respondent's Exhibit 51, namely Jacqueline Augustine (Jones), Martha Ballard, Cheryl Jones, and Michael Ohlemacher. All four were working at Audubon when they signed their cards. Respondent did not refute the testimony of the last two named individuals that they received offers from Audubon to work as RNs before they received their work permits. Cheryl Jones never was a nurse extern. Respondent did not refute. Augustine's testimony that she was an RNA when she signed the card. All four of these individuals are included on the list given by Respondent to counsel for the General Counsel of the "TOTAL RN STAFF as of 1/5/94" (GC Exh. 2). Additionally, Anderson testified that the four individuals, among others, were not included on Audubon's list of nurse externs as of January 5, 1994, they were not in Audubon's system as nurse externs as of January 5, 1994, and as of January 5, 1994, they were not considered externs for payroll purposes. Respondent stipulated that these individuals were not externs as of January 5, 1994. Originally Anderson testified that the nurse externs were not placed in RNA positions until orientation started on January 17, 1994. All four received their permits before the demand for recognition was made. Under these circumstances the cards of these four individuals will be counted.

Next, Respondent contends that eight cards are "stale" in that they are more than 1 year old, and the involved campaign was not interrupted by the filing and processing of an unfair labor practice charge. The card of Theresa Browning will not be counted since it is not clear what year the card was signed. On the other hand, while there was some question regarding when the card of Theresa Barnes was signed, I am satisfied that as the signer testified, the card was signed in 1993. It will be counted. With respect to the remaining six cards cited by Respondent as

being "stale," counsel for the General Counsel requests that they be counted since assertedly they were signed "within a reasonable period of time" prior to the demand for recognition. The card of Rhonda Stone is dated January 3, 1993. Surely the general rule should not be so technically or mechanically applied so as to preclude the consideration of a card signed just 2 days beyond a line drawn in the sand. In my opinion Stone's card should be counted. The least "stale" of the remaining five cards is dated December 12, 1992, and the most "stale" of the five cards is dated November 2, 1992. Now that "the camel's nose is in the tent" should we start to stretch the general rule further, accepting counsel for General Counsel's rationale that the involved cards are reaffirmations (except Coleman's), it was difficult to keep track of those whose cards had become stale in so large a unit and cards dated within 2 months of the 1-year period should be counted toward the Union's majority? This would include Coleman's card which is not a reaffirmation.

And finally with respect to the majority question, Respondent contends that 12 of the cards were obtained after the Union's request for recognition on January 5 and should not be counted. counsel for General Counsel requests that these cards also be counted since some of these signers were reaffirming cards signed more than 1 year prior to the demand for recognition and at least one other, who was a first time signer, was still employed at Audubon when she testified here. The problem with establishing a general rule and then making specified exceptions is that once you subsequently add to the list of exceptions an industrious advocate will attempt to obtain additional exceptions and use those exceptions as a justification for obtaining even more exceptions. Pretty soon the vitality of the general rule is compromised. While carving out numerous exceptions is sometimes a necessity, i.e. the hearsay rule, here in the age of the computer little or no weight should be given to the argument that it is difficult to keep track of whose card has become stale. Even before the age of the computer, cards could be placed in an index card box with separators indicating the month of the year. There would be no difficulty in determining which cards were becoming "stale." In my opinion, no justification has been shown for counting cards which were signed after the demand for recognition by someone who had not signed a card before. The question is whether the Union had a majority at the time of the demand—not whether the Union could find additional signers after the demand for recognition. And the justification given for further extending the involved period is, in my opinion, insufficient to justify that course of action. For the reasons stated above, I do not believe that the cards of the following signers should be counted: Jacqueline Bourke, Connie Branham, Gloria Coleman, Joan Driscoll, Ethel Johnson (Lester), Pamela Kelly, Karen Kuban, Cheryl Glisson, Melody Reibel, Margaret Metzger, Kathy Stoess, Twylita Schulz, Judy Slaton, Selma Becht, Linda Lowe, Susan Peak, and Jodie Steele. For the reason given by the General Counsel, as set forth above, the mislaid card of Vanaja Selvaraj will be counted. As noted above, Respondent argues that the card of Theresa Vincent should not be counted since the General Counsel failed to show that she was a member of the bargaining unit on January 5, 1994. Vincent is not included in the General Counsel's Exhibit 2, the list of RNs at Audubon on January 5, 1994, and Vincent is not included in the General Counsel's brief. Her card will not be counted.

By my count, the Union needs 319 for a majority. It has 348. As alleged in paragraph 8 of the August 11, 1995 amended consolidated complaint (a) within a reasonable period of time prior to January 5, 1994, a majority of the unit, by executing authorization cards, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent, and (b) at all times since January 5, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Paragraph 9 of the August 11, 1995, amended consolidated complaint alleges that the conduct described above in paragraphs 5 and 6 is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone. On brief, counsel for the General Counsel points out that the Supreme Court approved the Board's use of a bargaining order remedy in two types of cases, namely those "exceptional cases" in which a respondent's "outrageous" and "pervasive" unfair labor practices have rendered a fair rerun election impossible, and those "less extraordinary cases . . . which nonetheless still have the tendency to undermine majority strength and impede the election process." It is also pointed out by counsel for the General Counsel that the Court stated in the latter type cases that a bargaining order should issue if the Board finds that "the possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight," and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order. The General Counsel contends that here Respondent committed hallmark violations including the granting of an across-the-board pay raise and the announcement of improvements in benefits in order to discourage employee support for the Union; that the Board has consistently held that unlawfully granted wage increases or benefits "are particularly lasting in their effect on employees and difficult to remedy by traditional means, not only because of their significance to the employees, but also because the Board's traditional remedies do not require the employer to withdraw the benefits from employees." *Camvac International*, 288 NLRB 816, 820 (1988); that additionally threats to close a facility and threats of loss of jobs and benefits in the event employees select union representation are clearly violative of the Act are particularly destructive of employee freedom of choice; that the establishment of an employee committee to deal with terms and conditions of employment and the threat by Respondent's chief operating officer that it would be futile to select the Union when considered with the above-described unlawful conduct, constitute grounds to set aside the 1994 election and enter a remedial bargaining order since the cumulative effect of Respondent's violations are sufficiently serious to preclude the holding of a fair rerun election; that although the unfair labor practices here are not "outrageous and pervasive" they undermined the union's majority and interfered with the electoral process; and that as pointed out in *NLRB v. Anchorage Times Publishing Co.*, 637 F.2d 1359, 1370 (9th Cir. 1981), cert. denied 454 U.S. 835 (1981), "wage increases are the most significant of the violations warranting a *Gissel* bargaining order instead of a rerun election for "it is unlikely that those who received such benefits, or who heard of

them, will forget that it is the company that has the final word on wage increases—and decreases." The Union, on brief, points out that the Board in *Honolulu Sporting Goods Co.*, 239 NLRB 1277, 1282 (1979), quotes the following language from *Tower Records*, 182 NLRB 382, 387 (1970), enfd. 79 LRRM 2736, (9th Cir. 1972):

> It is a fair assumption that in most instances where employees designate a union as their representative, a major consideration centers on the hope that such representative may be successful in negotiating wage increases. Certainly this appears to have been an important consideration in the instant case. A unilateral award of a wage increase by an employer following a union's demand for recognition results in giving the employees a significant element of what they were seeking through union representation. It is difficult to conceive of conduct more likely to convince employees that with an important part of what they were seeking in hand union representation might no longer be needed. An employer may have the right to persuade the employees that representation is not in their best interests, but it does not have the right to threaten them or confer benefits on them which are designed to influence the employees against choosing a representative. When, as here, an employer does so, free choice in a subsequent election becomes a matter of speculation, so long as the effects of the interference remain unremedied.

The Union argues that Respondent's preelection announcement of a postelection pay increase effectively made the granting of the increase conditional on the Union's losing the election; that Respondent's sole purpose for granting the wage increase was to influence the employees' vote and Respondent had no intention of granting a wage increase until the union petition was filed; that the vice president of Columbia/HCA told managers regarding wage increases that they were going to do what it took to win the election; that Respondent engaged in an extensive antiunion campaign consisting of severe and numerous unfair labor practices which disseminated to all RNs in the bargaining unit; and that every level of Respondent's management violated the Act. Respondent, on brief, contends that a bargaining order is an extraordinary remedy which is imposed under extraordinary circumstances, absent here; that it did not commit any unfair labor practices; that the alleged bargaining unit is very large, comprising approximately 640 employees, most of whom work at different times in different units; that fewer than 50 employees or less than eight percent of the alleged unit, were exposed to the alleged unfair labor practices; that there is absolutely no record evidence which would indicate that employer statements forming the basis for these unfair labor practices were disseminated among the workforce; that almost all allegations of unfair labor practices were made against relatively low-level supervisors who had no power to implement such threats; and that Respondent committed no hallmark violations warranting a bargaining order in that it did not threaten plant closure, discriminatorily terminate union adherents or grant significant benefits to employees.

Respondent's violations are set forth above. They run the gamut in that they were committed by one of Respondent's highest ranking managers to some of its lowest ranking managers. That many of them were committed against union supporters was no accident. As Vandewater testified, he probably asked Wood to point out particular employees that she thought it might be important for him to talk with on a particular unit. Vandewater sought out Stacy Myers Doyon and he intentionally and physically made her a messenger. Respondent's antiunion campaign was very sophisticated. In my opinion, its approach was measured beforehand in terms of being able to make an attempt to defend while accomplishing its task. Nonetheless, contrary to Respondent's assertions, as noted above, it did commit hallmark violations. And these violations collectively affected all of the unit members. In the circumstances existing here, it is not only appropriate but, in my opinion, it is essential to issue a bargaining order. The effects of Respondent's unlawful conduct cannot be erased by merely ordering Respondent to cease and desist. The nature and the extent of Respondent's unfair labor practices have made a free choice by the employees slight to nonexistent. As alleged in paragraph 9 of the August 11, 1995, amended consolidated complaint, the conduct described above in paragraphs 5 and 6 is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone.[114]

[114] With respect to those who take the position that the appropriateness of a bargaining order must be assessed as of the time it is issued, it should be noted that Respondent has not requested that the record be reopened to submit evidence of changed circumstances after its unlawful conduct, such as employee turnover which may or may not erode majority support for the Union. As found below, Respondent continued in its unlawful conduct after the original hearing. I have no doubt that Respondent will do whatever it believes is necessary, including continuing its unlawful conduct, to keep the employees from having a fair election. It has demonstrated that to be the case and it continues to demonstrate that to be the case. Merely telling Respondent in the situation at hand to stop and "don't' do that again" would be telling the involved employees that even though Respondent continues to violate the law the best they can hope for is to begin all over again. Respondent has done pretty much what it wants to and with a cease and desist remedy only, the most that will happen to it, in the eyes of the employees, is that it will receive little more than a slap on the wrist. To those who would erect a cathedral around the indication that a bargaining order is an extraordinary thing, it should be noted that after the passage of a specified period, if the majority of employees are not satisfied, they can petition for recertification. One would like to be able to look to the vote but where, as here, Respondent has violated and will not hesitate, in my opinion, to continue to violate the law there is no "after the employer's unlawful conduct." As pointed out by the Board in *Sheraton Hotel Waterbury*, 312 NLRB 304 (1993), the turnover rate is not a relevant consideration under existing Board law concerning factors governing the issuance of a *Gissel* bargaining order. And as pointed out by the Board in *Intersweet, Inc.*, 321 NLRB 1 (1996), the Board adheres to this position—that the validity of the bargaining order depends on an evaluation of the circumstances as of the time the unfair labor practices were committed—largely on the grounds that consideration of changed circumstances after the unfair labor practices were committed would reward, rather than deter, an employer who engaged in unlawful conduct during an organizational campaign. And with respect to considering turnover, anyone making this effort here would have to, in fairness, consider the fact, as described above, that after the election there were complaints about a manager, Darrin Ford, there was an unusually high turnover rate in the group that he supervised, he apparently created a hostile environment (Hundley's testimony that Ford "cussed" at her, slammed his fists on the desk, talked about her children, and harassed her was not even denied by Respondent). With at least the tacit approval of Respondent for, as indicated above, there were complaints

On brief, the Union points out that the remaining objections issues not coextensive with the unfair labor practices alleged in the amended consolidated complaint as follows:

> 1. Whether the Employer engaged in objectionable conduct by insisting on the inclusion of registered nurse applicants (RNAs) in the bargaining unit yet discriminatorily challenging, during the election, the votes of RNAs it judged to be supportive of the Union while not challenging the votes of other RNAs?
>
> 2. Whether the Employer engaged in objectionable conduct when it interrogated nurses about their stand on the Union?
>
> 3. Whether the Employer engaged in objectionable conduct by maintaining lists of employees' positions concerning the Union, assigning certain RNs to attend meetings with CEO Bill Brown on paid work time, and whether these actions created an impression of Employer surveillance of employees' support for the Union?
>
> 4. Whether the Employer engaged in objectionable conduct by soliciting employees to wear antiunion buttons?
>
> 5. Whether the Employer engaged in objectionable conduct by assisting in the establishment of an antiunion RN committee called Nurses For Nurses (NFN) and by promoting this committee through recruitment, financial assistance, and allowing NFN activities to occur on work time?

Regarding number 1 above, the Union contends that two of the RNAs the Employer challenged wore union buttons at the hospital and these challenges tended to restrain, coerce, and intimidate employees in the exercise of their Section 7 rights. Audubon argues that there is no Board rule or restriction that prohibited Audubon from challenging any voters. As noted above, Riley testified that Audubon challenged two RNAs because they applied for positions at other hospitals and Audubon was not sure that they were going to continue working for it. Bagby's above-described testimony that the Board agent was told that the RNAs were being challenged because they did not have their licenses was not refuted. The reason given by Audubon has changed. Also the testimony of Bagby that two of the RNAs challenged wore union buttons in the hospital was not refuted. Consequently, it can be concluded that these two engaged in union activity and the Employer knew. Audubon has changed its reasons for the challenge. It challenged them because they were open union supporters. Riley is not a credible witness. Respondent made no attempt, other than Riley's assertion, to demonstrate that the two had applications pending at another employer. And even they did, that is not sufficient justification for Respondent's action. This objection will be sustained. With respect to number 2 above, Respondent correctly submits that no evidence was introduced could result in sustaining this objection.[115] Regarding number 3 above, the Union contends that the scheduling of certain employees to attend the meetings given by Bill Brown created the impression of surveillance amounting to objectionable conduct by Audubon. Audubon argues that there is no evidence that Audubon did more than observe employees at work and this normal observation of employees at Audubon cannot be held to be "surveillance" sufficient to affect the conduct of the election. The employees who participated in the involved campaign were more open and active than any group that I have encountered in my experience, i.e., having their picture placed on a billboard on a local street, among other things. I do not believe that it has been demonstrated that the actions Audubon took created an impression of employer surveillance of employees' support for the Union. This objection will be overruled. Number 4 above will be sustained since Riley testified that some managers had antiunion buttons on tables but employees were not forced to wear such buttons. Being forced to wear the antiunion button is not the issue. A manager making the antiunion buttons available to employees and putting them in the position where they had to choose to wear or not to wear the buttons was objectionable. This objection will be sustained. And finally, with respect to number 5 above, I do believe that Audubon unlawfully assisted the Nurses for Nurses (NFN). Pugh, at the behest of Riley delivered a list of certain Audubon employees to NFN. Riley's "I do not recall" carries no weight. Contrary to the arguments on brief, the list was not an *Excelsior* list. As noted above, on a Saturday approximately 2 weeks before the election Riley telephoned Pugh at his home and gave him a list of 25 to 30 employees' names. At the behest of Riley Pugh then went to the hospital, looked up these employees' telephone numbers and made a list. This was no *Excelsior* list.[116] He then, as direct by Riley, delivered the list to an Audubon RN who was in the NFN. Both Riley and the NFN RN told him the list was of people who could vote either way in the election and the NFN was going to telephone them and try to convince them to vote for the hospital. At one time Audubon supervisor Edith Harper was on the NFN committee and, as NFN founder Miriam Gravatte testified, Harper would put NFN handouts in the employees' mailboxes when she was at work. And Barbara Sautel's testimony is credited with respect to supervisor Carol Young suggesting to her that she might be interested in going to a meeting of the NFN. Young did not impress me as being a credible witness. She equivocated with respect to what she told the nurses regarding jobs it the Union won the election. This objection will be sustained.

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and Respondent choose to let the situation continue. In other words, an employer can manipulate turnover. Also there is a question as to whether the floating by management of proposed staffing guidelines under the reengineering proposal was the cause of increased turnover. And once you start to consider turnover up to the time of the issuance of the bargaining order, in situations such as the one at hand, you would have to allow the parties to introduce evidence with respect to the reasons for turnover. Would this result in a two-part proceeding where one would first determine that there is a need for a bargaining order since a fair election is not be possible? Then the second hearing would be held to determine if circumstances had changed and if any turnover had been unlawfully manipulated by the employer. If the second hearing involves the taking of a lot of evidence and if it takes some time to reach a decision in that part at the initial stage and with appeals, would it be necessary to begin the process again to consider turnover, etc. which has occurred during the pendency of the second proceeding? There has to be finality. If there is not, the employees would begin to wonder if the system is being used improperly. If they conclude that such is the case, whether justified or not, then there is no real likelihood of a fair election. Here in view of Respondent's violations the possibility of erasing the effects of the unfair labor practices and conducting a fair election are, in my opinion, nonexistent. As noted below, Respondent took measures to support NFN and Respondent unlawfully punished union supporters who participated in the first stage of the proceeding here. These messages are not lost on the employees. It is clear that Respondent appreciates this fact.

[115] As pointed out by Audubon, the employees questioned about their union support were open and active union supporters, *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985).

[116] According to the testimony of Donna Porter, who was in NFN, Pugh delivered an *Excelsior* list to her outside of human resources. The list Pugh delivered on a Saturday was delivered to the home of the RN who was in the NFN.

Those objections which are coextensive with the unfair labor practices alleged in the amended consolidated complaint are sustained to the extent that it has been found above that Audubon violated the Act. The sustained objections would result in the election held on March 3 and 4, 1994, being set aside and Case 9–RC–16332 being remanded to the Regional Director for Region 9 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a bargaining representative. But as noted above, I believe that the nature and the extent of Respondent's unfair labor practices have made a free choice by the employees nonexistent.

Paragraphs 6 and 7 of the complaint in Case 9–CA–33632 allege as follows:

> 6. (a) About December 1995, . . . Respondent implemented a "job redesign" procedure which is still ongoing to reorganize the staffing and job duties of the unit positions.
>
> (b) The effects of the conduct of Respondent described above in paragraph 6(a) has had, and will continue to have, an adverse impact on the unit resulting in a substantial reduction in the staffing, and various changes in the job duties, of the bargaining unit positions.
>
> (c) The subject set forth above in paragraph 6(a), and its effects on the unit as described above in paragraph 6(b), relates to wages, hours and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining.
>
> 7. Respondent engaged in the conduct described above in paragraph 6 without affording the Union an opportunity to bargain with Respondent with respect to the conduct or the affects of the conduct.

On brief, counsel for the General Counsel contends that if granted, the bargaining obligation would attach at the point in time when the Union achieved a card majority and Respondent commenced its unlawful campaign on January 5, 1994; that the restructuring and adoption of the patient focused care model was not an entrepreneurial decision in that Respondent did not change the scope, nature or direction of its business; that Respondent has merely decided to perform the same functions with fewer employees by substituting one group of employees for another and by changing the hours and working conditions of RNs; that these are clearly decisions amenable to the collective-bargaining process, *Holmes & Narver*, 309 NLRB 146, 147 (1992); that there is no need to apply the multistep analysis laid out in *Dubuque Packing Co.*, 303 NLRB 386 (1991), and determine whether Respondent's decision turned on labor costs since this was not a core entrepreneurial decision; that Respondent's unilateral action cannot be excused since it certainly has had a detrimental impact on the unit in that Respondent decreased the hours of 152 RNs, thereby reducing their pay and benefits; that some RNs were involuntarily transferred to insecure jobs in the registry; that RNs are performing additional duties and caring for more patients than they had in the past; that there was a dramatic rise in the attrition rate of RNs which is evidence of the restructuring's adverse effect on the unit; and that it would have been futile for the Union to request to bargain over the restructuring, it was not obligated to do so and the fact that it did not does not, in the circumstances of this case, constitute waiver. The Union, on brief, contends that the restructuring directly affected the wages, hours and working conditions of the RN bargaining unit; that Respondent admitted that the restructuring resulted in the elimination of 68 FTE RN positions and reduced the FTE status of 152 RNs; and that the restructuring also directly affected the working conditions of the RNs in that Respondent combined and reassigned work done by RNs, LPNs, X-ray employees and respiratory therapists. Respondent, on brief, argues that the reengineering is not violative of the Act as Audubon had no bargaining obligation; that the reengineering involved fundamental changes in its health care delivery system thus constituting an entrepreneurial decision which is not a mandatory subject of bargaining, *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981); that the new model of patient care delivery resulted in the redesign of approximately 1200 nursing department positions at Audubon, of which approximately half were RN positions; that respiratory therapy, EKG and phlebotomy were redeployed to units in order that these functions be performed at the patients' bedsides; that there is no evidence the reengineering turned solely on labor costs; that RNs have experienced no diminution of earnings or loss of job opportunity since the reengineering; that while there was a time when RNs were working through the house registry to obtain their desired FTE, most RNs have returned to their previous FTE in their department; that absent evidence of a demonstrable adverse impact on RNs, there can be no duty to bargain over the reengineering; that the burden to Audubon to bargain with one discrete classification of employees concerning a reengineering which was being implemented at literally scores of Columbia/HCA facilities would be sizeable, clearly outweighing the benefit to the collective-bargaining process; that it was also necessary that Audubon move forward with this undertaking in short order given its unattractive financial position; that the reengineeing involved a great deal more than merely expanding or contracting the job responsibilities of Audubon RNs; that bargaining over narrow issues such as that would have been meaningless in the context of the mammoth changes taking place at scores of Columbia/HCA facilities; and that by failing to request that Audubon bargain over the staff reengineering, the Union waived its right to compel bargaining on this matter.

Taking Respondent's last argument first, the Union did not waive its right to compel bargaining on this matter for, as pointed out by the General Counsel, Respondent has never recognized the Union as the collective-bargaining representative of its employees, Respondent was, and remains, unwilling to bargain with the Union, it would have been futile for the Union to make such a request, and therefore, it was not obligated to do so. Going to the patient focused care approach was not an entrepreneurial decision in that Respondent did not change the scope, nature or direction of its business. Rather, as pointed out by the General Counsel, Respondent merely performs the same functions with fewer employees by substituting one group of employees for another and by changing the hours and working conditions of RNs. Such approach had a detrimental impact on the unit. Such decisions are clearly decisions amenable to the collective-bargaining process, *Holmes & Narver*, supra. There is no need to apply the multistep analysis laid out in *Dubuque Packing Co.*, supra, and determine whether Respondent's decision turned on labor costs since this was not a core entrepreneurial decision. Respondent violated the Act as alleged in paragraphs 6 and 7 of the complaint in Case 9–CA–33632.

Paragraph 6 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5 alleges as follows:

> 6. (a) On December 12, 1995, Respondent gave employee Terry Hundley a low evaluation because she filled out a disclaimer notice or made oral statements, concertedly complaining to Respondent regarding shortages in staffing and because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(b) About January 15, 1996, Respondent denied employee Terry Hundley a full-time Patient Care Leader position because since about September 1994 she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) About February 8, 1996, Respondent subjected its employee Terry Hundley to an exit interview and denied her employment on a call-in -basis because she filled out a disclaimer notice or made oral statements, concertedly complaining to Respondent regarding shortages in staffing and because she joined, supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Counsel for the General Counsel, on brief, contends that the evidence clearly establishes a prima facie case that Respondent issued Hundley a low evaluation, denied her the PCL position and, thereafter, a pool position because of her union and concerted protected activity; that Hundley supported the Union and demonstrated that support openly by wearing a union button to work, discussing unionization with her coworkers, filling out the above-described disclaimer form, which was composed by the Union and showing it to Darrin Ford and authenticating her authorization card during this proceeding; that Respondent was aware of Hundley's union sympathies; that Hundley was very vocal about nurses' staffing concerns; that the evaluation of Hundley which is at issue is significantly lower than all of her recent evaluations and it relied on a clearly unlawful disciplinary action issued by Shirley Turner; that the selection of Paula Case over Hundley for the PCL position was motivated by unlawful considerations and Case was only an extern at the time of the election involved herein and she was not involved with the Union; that Respondent's refusal to grant Hundley a pool position and its mandate that she be interviewed before being considered for this position were clearly unlawful; that while Cook claimed poor attendance barred Hundley from working in the pool, other employees with far worse attendance records were granted pool status; that the pretextual nature of the attendance claim was demonstrated by the fact that when Hundley demonstrated that she had fewer points than Cook originally ostensibly thought, Cook was not moved; that the other stated reason for refusing pool status to Hundley that she did not support the restructuring and she did not get along with management showed that Respondent viewed Hundley as aligned with the Union in its opposition to the restructuring and she complained too much; and that Bob Nettles was unable to think of one pediatric RN whose request to work in the pool was denied and Respondent failed to produce any evidence that any other RN, regardless of unit, was denied pool status. Respondent, on brief, argues that the General Counsel has failed to show the requisite causal connection between any protected activity and allegedly discriminatory employment actions; that the General Counsel has failed to establish that Hundley's adverse employment actions were the result of union animus as the evidence reflects that such actions were taken by an immediate supervisor with whom Hundley had a contentious working relationship; and that Hundley was not subject to any disparate treatment on the basis of her protected activity, as other employees engaged in that activity experienced no adverse employment actions.

The General Counsel has shown that Hundley engaged in protected activity and Respondent knew. Also union animus on the part of the Respondent has been shown. For two reasons, Respondent is mistaken in its position that the General Counsel has to show "union-animus exhibited by the individual responsible for all of the employment actions concerning which Hundley now complains." First Ford was only "responsible" for Hundley's evaluation. It was not demonstrated that he was the decision maker regarding the patient care leader position or the requirement that Hundley, unlike anyone else who went before her, have an exit interview to decide whether she would be allowed to be in the pool. Second, the General Counsel, in the situation at hand, is not required to show union animus on the part of the individual, Ford. Respondent's union animus has been amply demonstrated in this proceeding. Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has demonstrated that Hundley engaged in open activity in support of the Union and in concerted protected activity, that Respondent knew, and there is antiunion animus on the part of Respondent. The General Counsel has made a prima facie showing sufficient to support the inference that protected activity was a motivating factor. On the other hand, Respondent, for the reasons specified by the General Counsel on brief—as set forth above, has failed to persuade by a preponderance of the evidence that it would have taken these same actions even in the absence of Hundley's union and concerted protected activity. Respondent violated the Act as alleged in paragraph 6 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5.

Paragraph 7 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5 alleges as follows:

7. (a) About August 17, 1995, Respondent issued a written reprimand to its employee Gloria Gant because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(b) About January 17, 1996, Respondent assigned its employee Gloria Gant to second shift because she joined, supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725-1 and 9–CA–32276.

(c) About January 31, 1996, Respondent issued its employee Gloria Gant a low evaluation because she joined, supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

The General Counsel, on brief, contends that Gant's written warning, assignment to second shift, and low evaluation were unlawfully motivated; that Gant was a main union adherent whose union activities were known to Respondent; that Respondent's primary reason for disciplining Gant, her alleged disobedience, is clearly a farce; that the uncontradicted testimony is that Cottingham never told Gant not to return to the patient's room; that rather, Cottingham informed Gant that she was not to care for the patient once her shift was over; that Cottingham overtly approved of Gant's actions by going with Gant to speak to the parents; that Nettles conceded that Gant was never told not to visit the room for the remainder of her shift; that Gant did not violate any instructions and Respondent

contrived a reason to retaliate against her for her protected activities; that the severity of the discipline and the evidence of disparate treatment demonstrates Respondent's unlawful motives; that on the involved evaluation Respondent penalized Gant based on an allegedly unlawful warning that did not even issue during the appraisal period; that Respondent's summary of evaluation scores received by other RNs in the pediatric unit fails to show consistent treatment since the list is incomplete; that Gant's second-shift assignment was unlawful and Respondent's justification fell apart when Nettles admitted that the work Gant performed on the second shift was no different from that which she performed on first shift; that Respondent did not transfer any other RN working on Gant's shift; that Respondent's claim that Gant could not be considered for an RN position contradicts its transitional duty policy; and that Respondent, being well aware of Gant's medical problem, assigned her to second shift as retaliation for her union and other protected concerted activities or because she participated in Board proceedings. Respondent, on brief, argues that the General Counsel has failed to show the requisite causal connection between any protected activity and Gant's August 1995 reprimand since it had been nearly a year since Gant engaged in any protected activity; that Ford was unaware of Gant's union activities; that Gant violated hospital policy by confronting a patient's relatives who had just complained about her care; that the fact that Respondent later reviewed and lessened discipline does not establish an unlawful motive; that 4 months elapsed between Gant's testimony at the hearing herein and her reassignment to the second shift; that there is no proof of a causal connection between Gant's protected conduct and her reassignment; that once Gant brought her health concerns to the attention of Audubon management she was placed back on the first shift; and that Gant was not subject to any disparate treatment on the basis of her protected activity, as she was treated similarly to other employees, including many employees who did not support the NPO.

Among the union activities engaged in by Gant was having her picture on the billboard on Poplar Road, wearing union buttons both before and after the election, and soliciting union authorization cards both before and after the election. The facts regarding Gant's discipline are summarized above. They fully support the contentions of the General Counsel on brief. It is noted that Cook also signed the unlawful discipline of Gant. Certainly there is no question but that she was at Audubon during the involved union campaign. The facts did not justify this discipline. At the outset charge nurse Cottingham told Ford that nothing happened that would warrant someone being written up. Ford told Cottingham that they did not need to discuss it. The reason they did not need to discuss it was because what had happen would have no bearing on what was going to happen. Eventually Respondent's treatment of the situation was twisted by Cook into "a failure to follow the Charge Nurses' instruction as well" and, by the person ruling on Gant's appeal of her grievance, "[t]his action is based on the fact that you took issue with the family inspite [sic] of the recommendation by the charge nurse to not do so." Both of these quoted assertions are untrue. There was no business justification for the discipline. The fact that the evaluation in question refers to this discipline which occurred outside the considered period of the evaluation undermines any claim that the evaluation is valid. But to make matters worse from Respondent's perspective, the discipline referred to was itself unlawful. Respondent knew before Gant was assigned to the second shift that she had diabetes. Earlier when she was taken off the first shift she had problems with her diabetes. She told Ford that she did not want to be transferred off the first shift. When she was transferred nonetheless Gant filed a grievance with respect to, inter alia, being placed on the second shift. Gant worked for 4 weeks before being placed back on the first shift. During that period she suffered an insulin reaction while working on the second shift and she had problems seeing at night. Gant was transferred back to the first shift after she sought medical attention and her doctors wrote a letter indicating that she had to be placed back on first shift in order to control her diabetes. Under *Wright Line*, supra, the General Counsel has demonstrated that Gant engaged in open activity in support of the Union and she participated, to the extent described above, in this Board proceeding, that Respondent knew, and there is antiunion animus on the part of Respondent. The General Counsel has made a prima facie showing sufficient to support the inference that protected activity was a motivating factor. On the other hand, Respondent, as pointed out by the General Counsel and for the reasons set forth above, has failed to persuade by a preponderance of the evidence that it would have taken these same actions even in the absence of Gant's union activities and her above-described participation in this proceeding. Respondent violated the Act as alleged in paragraph 7 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5.

Paragraph 8 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5 alleges that about January 12, 1996, Respondent denied its employee Patricia Clark a full-time patient care leader position because since about September 1994 she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276. The General Counsel, on brief, contends that it is obvious that Clark's above-described activities in furtherance of unionization, in addition to those against the restructuring, were open and known to Respondent; that the questions posed by Wempe and Falk during Clark's interview focused in Clark's allegiance to the hospital and the restructuring, rather than Clark's background and experience; that an inference should be drawn from the interview that the interviewers perceived Clark's union sympathies as inconsistent with being a loyal employee; that the fact that Clark had to request consideration for the .5 PCL position after learning that she did not receive the full-time job highlights Respondent's bias against Clark; that based on the written promise from former CEO Bill Brown made to Clark in 1991, Respondent had an obligation to place Clark in the full-time position; that the nature, substance, and function of the of the PCL and charge nurse positions are the same—only the title has changed; that Clark had more seniority than Brenda Canary, the RN chosen for the position who was not a union supporter; and that Respondent did not present any evidence at the hearing to explain its decision to bypass Clark. Respondent, on brief, argues that Audubon's denial of a PCL position to Clark does not support a prima facie case of discrimination/retaliation, as she was not the most qualified candidate for the position; that Clark was not the only employee denied a full-time PCL position, as six other employees in her department were denied the same position; and that initially Clark, under the reengineering, received a pay increase and in April 1996 Clark received a .8 FTE PCL position solidifying the pay increase she received.

Regarding Respondent's assertion on brief that Clark was not the most qualified candidate for the 1.0 full-time 7 to 3 PCL position, it is noted that Wempe indicates in her response to Clark's grievance that "[t]he most qualified candidates were chosen for the positions of Patient Care Leader based on objective criteria only" (GC Exh. 568). Wempe does not indicate in this document just what the objective criteria are. But in her appeal of Wempe's ruling on her grievance, Clark indicates that Wempe told her that she, Clark, was graded on the grid system and her scores were almost as good as the person who got the job (GC Exh. 569). Wempe did not deny telling Clark this. Yet Respondent chose not to introduce such grids to demonstrate that the "most qualified" individual was chosen. As noted above, Brenda Canary was awarded the position at issue. Respondent did not deny the following which appears in Clark's grievance (GC Exh. 567):

> Brenda Canary was awarded the position. Her seniority date is 9–10–84, and my seniority date is 2–25–77. Having worked for almost 19 years at Audubon, my seniority is greater than that of Brenda who has less than 12 years. In addition to longevity, I have many years experience as designated charge nurse and relief charge nurse on 3 East. Brenda Canary does not have this extensive charge experience. She never worked as Designated charge nurse and was reluctant to work as a relief charge nurse. Brenda has always been against NPO, has never signed a union card, and served as the employer observer in the 1989 election.

The obvious question is what constituted the "most qualified" in Respondent's opinion? What were the "objective criteria" and why should Respondent be hesitant to share them and let a determination be made as to whether in truth the "most qualified" person was chosen? One thing is clear. The former CEO of Audubon made a written committment to Clark that she would receive the next designated charge nurse position that became available (GC Exh. 570). Clark's assertion that there is no real difference between the charge nurse position and the position of PCL has not been refuted. And certainly any minor differences that may exist cannot be a justification for going back on such a committment. Under *Wright Line*, supra, the General Counsel has demonstrated that Clark engaged in extensive activity in support of the Union and she participated, to the extent described above, in this Board proceeding, that Respondent knew, and there is antiunion animus on the part of Respondent. The General Counsel has made a prima facie showing sufficient to support the inference that protected activity was a motivating factor. On the other hand, Respondent, for the reasons set forth above, has failed to persuade by a preponderance of the evidence that it would have denied Clark the PCL position she sought even in the absence of Clark's union activities and her above-described participation in this proceeding. Respondent violated the Act as alleged in paragraph 8 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5.

Paragraph 9 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5 alleges that about January 15, 1996, Respondent denied its employee Ann Hurst a full-time patient care leader position because since about September 1994, she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276. On brief, the General Counsel contends that Hurst was an ardent union activist whose union support was known to management; that the uncontradicted testimony is that Chappel and Stewart, who received the two involved PCL positions, did not engage in any union activity; that Hurst was the most qualified applicant for the involved PCL position; that Hurst testified that there is no difference between the former charge nurse position and the current PCL position; that Hurst had the most charge nurse experience of all of the applicants and the most seniority; that Stewart, who had been a RN for less than 2 years, had lower scores on her recent evaluations than Hurst; that Hurst was the only RN on her shift whose FTE status was reduced; and that Respondent failed to present any testimony to explain why it chose Chappel and Stewart over the more experienced Hurst. Respondent argues on brief that Hurst was virtually ignorant of the reengineering when she interviewed for a full-time PCL position; that something was worked out so that Hurst, notwithstanding the fact that she did not get the involved PCL position, was able to maintain the same hours she previously worked, with no loss in pay or benefits; and that Hurst was not treated in a disparate manner since three other union supporters received half of the available full-time PCL positions in Hurst's unit.

Hurst engaged in extensive union activity in that her picture appeared on the bulletin board on Poplar Road and in the NPO booklet, she wore union buttons to work, she leafleted for the Union outside Audubon, and in an earlier part of the hearing she sponsored a number of union authorization cards she received from other employees. Perhaps most telling is the fact that one time when she wore her union button to work she saw Vandewater who told her that "he was very opposed to Unions and he would do anything in his power to prevent them." Vandewater did not specifically deny that he said this. Hurst also testified that as they parted Vandewater shook her hand "and he squeezed it a lot harder than I thought he should have." Vandewater did not specifically deny that he engaged in this conduct with Hurst. As noted above, Hurst was not the only female nurse to testify about such conduct. With one other, Stacy Myers Doyon, Vandewater not only applied too much pressure he did not let go of her hand immediately. This misconduct was not unintentional. Under *Wright Line*, supra, the General Counsel has demonstrated that Hurst engaged in extensive activity in support of the Union and she participated, to the extent described above, in this Board proceeding, that Respondent knew, and there is antiunion animus on the part of Respondent. The General Counsel has made a prima facie showing sufficient to support the inference that protected activity was a motivating factor in denying the PCL position Hurst sought. On the other hand, Respondent, for the reasons set forth above, has failed to persuade by a preponderance of the evidence that it would have taken these same actions even in the absence of Hurst's union activities and her above-described participation in this proceeding. The only evidence about why Respondent chose Stewart, who had been an RN for a couple of years, versus Hurst, who had been an RN since 1981, was Hurst's own testimony regarding what she was told when she asked why Stewart received the position, namely, Stewart interviewed better than she, Hurst, did and Stewart wanted the job very badly and she came across that way. Perhaps this is the interviewer's concept of an objective standard. The interviewer, Karen Pietranton, who is described as the director over 5 West, did not testify to deny that she said this. This testimony is credited, Not

only isn't this a sufficient business justification for making the choice, it was, and it was meant to be, a message to Hurst. Respondent violated the Act as alleged in paragraph 9 of the consolidated complaint in Case 9–CA–33565–1, –2, –3, –4, –5.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(1) of the Act.

(a) In January 1994 Martin informed an employee that a fellow employee "burned her bridges" by engaging in union or protected concerted activities thereby implying that employees who engaged in such activities would be subjected to discrimination or discipline.

(b) In February 1994 Respondent posted at its Louisville facility a notice entitled "Audubon Regional Medical Center Staffing Improvement Plan" announcing the establishment of a committee to deal with employees' terms and conditions of employment in order to discourage employees' union or protected concerted activities.

(c) About February 16, 1994, Respondent announced an increase in benefits for part-time employees and the implementation of a new long-term disability insurance benefit for all employees in order to discourage employees' union or protected concerted activities.

(d) About February 18, 1994, Respondent announced a wage increase for all employees to be effective March 20, 1994.

(e) About the last week in February 1994, Respondent, by David Vandewater, at its Louisville facility, (i) threatened employees that their organizational efforts were futile and that Respondent would not negotiate with the Union in the event the majority of the employees voted for the Union, and (ii) solicited grievances from employees and promised to adjust them in order to erode employees' support of the Union.

(f) Respondent, by Sandy Bishop and Star Block, at specified times in February 1994, threatened employees that Respondent would refuse to negotiate with the Union in the event they selected the Union as their collective-bargaining representative.

(g) Specified supervisors threatened employees collectively in January and February 1994 with loss of benefits in the event the employees selected the Union as their collective-bargaining representative.

(h) Specified supervisors threatened employees during the critical period that Respondent would sell and/or close its hospital and that the employees would lose jobs if the Union were selected as their collective-bargaining representative.

(i) Specified supervisors at specified times in February 1994 discriminatorily enforced a "posting" rule by denying the posting of prounion literature while allowing antiunion literature to be posted.

(j) Specified supervisors at specified times in February 1994 solicited grievances from Respondent's employees and promised to adjust them in order to discourage employees from supporting the Union.

4. By engaging in the following conduct Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(1) and (3) of the Act.

(a) About August 9, 1994, Respondent discharged or permanently laid off its employee Joanne Sandusky because she and other employees of Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(b) On December 12, 1995, Respondent gave employee Terry Hundley a low evaluation because she filled out a disclaimer notice or made oral statements, concertedly complaining to Respondent regarding shortages in staffing and because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) About January 15, 1996, Respondent denied employee Terry Hundley a full-time patient care leader position because since about September 1994 she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(d) About February 8, 1996, Respondent subjected its employee Terry Hundley to an exit interview and denied her employment on a call-in basis because she filled out a disclaimer notice or made oral statements, concertedly complaining to Respondent regarding shortages in staffing and because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(e) About August 17, 1995, Respondent issued a written reprimand to its employee Gloria Gant because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(f) About January 17, 1996, Respondent assigned its employee Gloria Gant to second shift because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(g) About January 31, 1996, Respondent issued its employee Gloria Gant a low evaluation because she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(h) About January 12, 1996, Respondent denied its employee Patricia Clark a full-time patient care leader position because since about September 1994 she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(i) About January 15, 1996, Respondent denied its employee Ann Hurst a full-time patient care leader position because since about September 1994 she and other supporters of the Union, aligned themselves with the Union's position in protesting that "job redesign" or "reorganization" of the staff would result in loss of jobs and reduced patient care and thereby concertedly protested a change in a term and condition of their employment, and she joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities

5. By engaging in the following conduct Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(1) and (4) of the Act.

(a) About January 17, 1996, Respondent assigned its employee Gloria Gant to second shift because she gave testimony to the

Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(b) About January 31, 1996, Respondent issued its employee Gloria Gant a low evaluation because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(c) About January 12, 1996, Respondent denied its employee Patricia Clark a full-time patient care leader position because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

(d) About January 15, 1996, Respondent denied its employee Ann Hurst a full-time patient care leader position because she gave testimony to the Board in the form of an affidavit and for testifying on behalf of the Board in Cases 9–CA–31725–1 and 9–CA–32276.

6. By refusing to recognize and bargain with the Union as representative of a majority of the employees as requested in January 5, 1994, but instead engaging in the commission of those preelection practices described above, Respondent undermined the majority in the unit of employees that the Union represented, and made impossible the holding of a fair representation election. Respondent's refusal to bargain and embarking on this course of misconduct constituted an unfair labor practice in violation of Section 8(a)(5) of the Act.

7. By engaging in the following conduct Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(1) and (5) of the Act: about December 1995 Respondent implemented a job redesign procedure which is still ongoing to reorganize the staffing and job duties of the unit positions. This conduct has had, and will continue to have, an adverse impact on the unit resulting in a substantial reduction in the staffing, and various changes in the job duties, of the bargaining unit positions. These changes relate to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining. Respondent engaged in this conduct without affording the Union an opportunity to bargain with Respondent with respect to the conduct or the affects of the conduct.

8. The described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent's preelection unfair labor practices nullified the results of the March 3 and 4, 1994, representation election, and these unfair labor practices cannot be corrected by conventional remedies, including a rerun election, in view of the fact that in the situation at hand it is not possible to have a fair rerun election. Accordingly, it is appropriate and necessary that Respondent be ordered to bargain with the Union as of January 5, 1994, when the Union attained a majority and requested the Respondent to recognize it.

10. Respondent has not violated the Act in any other manner.

REMEDY

Having found that Respondent has engaged in a number of unfair labor practices and that the objections, to the extent set forth above, should be sustained, I shall recommend that Respondent be ordered to cease and desist from committing these unfair labor practices and take certain affirmative actions designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged or permanently laid off Joanne Sandusky, must offer her immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position of employment, without prejudice to her seniority or other rights and privileges enjoyed by her and make her whole for any loss of earnings or other benefits she nay have suffered as a result of the discrimination against her as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950) with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent having discriminatorily denied Terry Hundley, Patricia Clark, and Ann Hurst the full-time patient care leader positions they sought, must offer them such positions or, if such jobs no longer exists, to a substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges enjoyed by them and make them whole for any loss of earnings or other benefits they nay have suffered as a result of the discrimination against them, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

Respondent will be required to expunge from its records the August 9, 1994 unlawful discharge or layoff of Joanne Sandusky, the December 12, 1995 evaluation of Terry Hundley, the August 17, 1995 written reprimand to Gloria Gant and the January 31, 1996 evaluation of Gloria Gant, and any reference to thereto.

It shall be recommended that Respondent recognize and bargain with the Union on request and embody any understanding reached into a signed agreement.

Having found that Respondent has made unilateral changes in certain terms and conditions of employment of the employees in the involved unit in violation if Section 8(a)(1) and (5) of the Act, I recommend that Respondent revoke, on request of the Union, the unilateral changes, except as they relate to increases in pay or benefits for it would contradict the purposes of the Act to penalize employees by requiring Respondent to withdraw increases in pay or benefits. With these exceptions, and at the request of the Union, Respondent should return the terms and conditions of employment of the bargaining unit members to the status quo ante which existed on January 5, 1994, when the demand for recognition was made. I shall also recommend that Respondent reimburse unit employees and former unit employees for any monetary losses they may have suffered as a result of Respondent's unilateral changes, as prescribed in *F. W. Woolworth Co.*, supra, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

In view of the degree and pervasiveness of the unfair labor practices, a broad cease and desist order shall be recommended precluding Respondent from "in any manner" interfering with, coercing, or restraining employees in the exercise of their rights guaranteed by Section 7 of the Act.

[Recommended Order omitted from publication.]

APPENDIX A

The following is a list of employees who signed or executed union authorization cards on the dates indicated with the pertinent General Counsel exhibit number, who sponsored the exhibit (authorization card) (see fn. 1 below), and transcript reference, respectively:

Employees Who Signed Union Cards

Name	*Date*	*Exhibit*[1]	*Witness*	*Transcript*
Abbott, Anglia[2]	7/30/93	205	Johansen, M.	828
Adcock, Nancy[3]	2/4/93	307	Gamble, D.	1212
Allen, Carmelita	10/28/93	369	Pate, A.	1377
Anderson, Donna[4]	12/14/93	120	Zollman	589
Augustine, Jacqueline	11/19/93	228	Self (Jones)[5]	911
Austell, Bob	1/5/94	149	Kleitz, V.	687
Bagby, Melinda	7/15/93	310	Self	1223
Bailey, Cheryl	7/27/93	397	Zeigler, M.	1405
Baker, Margie	11/27/93	214	Self	848
Ball, Anna[6]	1/1/94	370	Pate	1377
Ball, Susan[7]	3/5/93	253	Doyle, D.	1002
Ball, Vicki	11/14/93	53	Self	226
Ballard, Angela[8]	1/13/93	98	McGiveney	487
Ballard, Celeste	2/27/93	14	Tillow	118
Ballard, Chris[9]	12/7/93	15	Tillow	118
Ballard, Lucinda	11/17/93	74	Kelly, M.	358
Ballard, Martha[10]	12/16/93	97	McGiveney	487
Barnes, Theresa[11]	1/13/–[12]	254	Doyle	1002
Barnett, Penny	10/12/93	183	Holthouser	768
Basham, Judy[13]	11/20/93	371	Pate	377
Bass, Jacquelyn[14]	3/15/93	23	Self	1285
Beasley, Valerie[15]	12/8/93	255	Doyle	1002
Becht, Selma[16]	1/15/94	365	Clark	1321
Bertoli, Janet	7/16/93	71	Self	337
Bielefeld, D.[17]	7/21/93	212	Self	831
Binggeli, W.[18]	3/9/93	256	Doyle	1002
Bishop, Maria[19]	1/18/93	257	Doyle	1002
	7/23/91	447	Self	3092
Bizzell, Karen[20]	1/5/94	343	Clark, P.	1319
Black, Patricia[21]	1/23/93	232	Tallant	933
Blair, Annette	10/12/93	61	Self (Adams)	259
Blake, Suzanne	9/30/93	189	Hurst, A.	781
Blankenbaker, Mary	11/23/93	45	Self	136
Bourke, Jacqueline	12/11/92	206	Self	1264
	6/12/91	207	Self	1264
Bradley, Sallye[22]	4/8/93	344	Clark	1319
Branham, Connie[23]	7/16/91	184	Holthouser	768
	12/2/92	408	Schmidt, B.	1455
Brantley, E.[24]	7/29/93	150	Kleitz	687
Breitmeyer, D.[25]	7/20/93	311	Bagby, M.	1223
Brewer, Dawn[26]	3/11/93	122	Zollman	589
Britt, Elizabeth[27]	3/11/93	123	Zollman	589
Brockman, Vickie	1/28/93	63	Self (James)	267
Brown, Glendora[28]	12/13/93	75	Kelly, M.	358
Brown, Glinda	11/16/93	320	Self	1262
Brown, Henry	2/6/93	312	Bagby	1223
Brown, Susan[29]	1/11/93	105	Kaiser, Y.	506
	3/2/93	24	Self	2799
Browning, T.[30]	9/19/—31	226	Self	895
Burba, Cecilia[32]	6/17/93	224	Self	869
Burch, M.[33]	7/21/93	185	Holthouser	768
Burch, Rosemarie[34]	7/21/93	186	Holthouser	768
Burgin, Nancy	11/23/93	227	Self	902
Buschman, Mary[35]	3/11/93	124	Zollman	589
Butler, Robin[36]	8/9/93	151	Kleitz	687
Cain, Sunetta	1/17/93	324	Self	1283
Campbell, Vicki	11/28/93	331	Gant, G.	1302
Carby, Nancy[37]	1/13/93	249	Kaiser, L.	976
Carmichael, L.[38]	7/28/93	203	Corbett, M.	816

	8/9/91	439	Self	2312
Carr, C.[39]	1/14/93	372	Pate	1377
Carter, Sandra[40]	2/27/93	25	Self	1416
Cawthon, Linda	3/4/93	26	Self	1397
Cecil, Mary	11/15/93	285	Self	1026
Chapman, Sandra[41]	1/13/93	106	Kaiser	506
Ciliberti, Carol[42]	1/20/93	216	Long, A.	855
Clark, Diane	8/8/93	152	Kleitz	687
Clark, Patricia	10/12/93	342	Self	1319
Clay, Paul[43]	10/28/93	373	Pate	1377
Cline, Judy	4/12/93	153	Kleitz	687
Cockerel, E.[44]	6/16/93	89	Self	436
Cohen, Constance[45]	1/14/93	74	Pate	1377
Cole, Kelly[46]	1/16/93	125	Zollman	589
Coleman, Gloria[47]	12/12/92	52	Self	224
Comstock, Donna[48]	2/4/93	190	Hurst	781
Cooper, Pamela[49]	12/11/93	332	Gant, G.	1302
Corbett, Mary	3/6/93	202	Self	816
Cottingham, Kim	11/15/93	91	Self	448
Cowden, Michelle[50]	1/26/93	191	Hurst	781
Curtsinger, Tamara	1/31/93	126	Zollman	589
Davis, Denise	12/15/93	83	Self	377
Daviss, Sharon	11/3/93	192	Hurst	781
Deaton, Rebecca	11/8/93	54	Self	228
DeFerraro, B.[51]	3/4/93	64	Self	277
Delarosa, Betty[52]	10/18/93	333	Gant	1302
Denney, Jody	1/5/94	127	Zollman	589
Denny, Debra[53]	5/2/93	409	Schmidt	1455
Dixon, Dorothy[54]	3/27/93	68	Self	318
Downs, Barbara[55]	11/12/93	128	Zollman	589
Doyon, Kenneth	6/9/93	258	Doyle	1002
Driscoll, Joan[56]	7/11/91	76(A)	Kelly, M.	358
	11/2/92	76(B)	Kelly, M.	358
Dugan, Lisa	11/5/93	193	Hurst	781
Duncan, Sylvia[57]	1/22/93	398	Zeigler	1405
Edelen, Avalena	2/6/93	313	Bagby	1223
Edwards, Dana[58]	1/24/93	172	Hodges, C.	727
Edwards, Renee[59]	12/30/93	75	Pate	1377
Esterday, Kathy	1/14/93	376	Pate	1377
Eyre, Leslie[60]	8/30/93	154	Kleitz	687
Fautz, Debby[61]	11/16/93	377	Pate	1377
Fenzel, Ann[62]	3/3/93	217	Long	855
Finerty, Jerry[63]	3/1/93	27	Self	272
Fizer, Ted[64]	4/21/93	420		1493
Flener, V. (Zollman)	10/12/93	119	Self	589
Floyd, Patricia[65]	11/23/93	345	Clark	1319
Franke, Tina[66]	1/24/93	173	Hodges	727
Franklin, Lisa[67]	3/11/93	129	Zollman	589
Franklin, Michael	12/16/93	314	Bagby	1223
Frazier, Kathy	6/12/93	155	Kleitz	687
Freiberger, C.[68]	3/30/93	28	Self	1340
	6/4/91	367	Self	1350
Fugate, Sherrie[69]	7/11/93	233	Tallant	933
Gamble, Deborah	3/6/93	306	Self	1212
Gant, Gloria	3/3/93	330	Self	1302
Gensheimer, Kim[70]	6/22/91	366	Clark	1321
	3/28/93	29		1321
Germano, Deborah[71]	1/21/93	77	Kelly, M.	358
	7/3/91	434	Self	2287
	1/25/93	435	Self	2287
Gertz, Tamelya	5/4/93	208	Johansen	828
Gibson, Jeanne[72]	7/21/91	145	Zollman	589
	3/4/93	30		590
Gividen, Karen	1/14/93	259	Doyle	1002
Glisson, Cheryl[73]	11/29/92	156	Kleitz	687
	1/6/94	378	Pate	1377
Grace, Susan[74]	1/25/93	174	Hodges	727
Grasch, Linda	11/12/93	118	Self	515
Gray, Barbara	1/13/93	107	Kaiser	506
Gray, Barbara[75]	10/28/93	379	Pate	1377

Greenwood, S.[76]	1/14/93	218	Long	855
Grizzle, P.[77]	6/9/93	292	Sandusky	1088
Haines, Semon[78]	10/28/93	380	Pate	1377
Hardin, L.[79]	10/18/93	334	Gant	1302
Harper, Jaci	11/29/93	335	Gant	1302
Harping, Elizabeth[80]	6/16/93	321	Brown, G.	1262
Harris, M.[81]	3/31/93	430		1504
	5/15/92	430		1504
Harrison, Stacy[82]	6/7/93	157	Kleitz	687
Hatfield, Holly[83]	8/11/93	78	Kelly, M.	358
Haughtigan, Kara[84]	12/8/93	315	Bagby	1223
Heck, Patricia	11/12/93	290	Self	1038
Heichelbrech, M.[85]	10/19/93	158(A)	Kleitz	687
	11/9/92	158(B)	Kleitz	687
Heimerdinger, Judy[86]	1/19/93	108	Kaiser	506
Heishman, Sandra[87]	1/11/93	109	Kaiser	506
	11/4/93	221	Wiseman, J.	865
Hereford, Dianna[88]	12/11/93	316	Bagby	1223
Hibbs, Linda[89]	6/9/93	381	Pate	1377
Hicks, Mechele[90]	1/24/93	175	Hodges	727
Higdon, Ann	3/14/93	31	Self	1391
Holloway, Helen	11/13/93	72	Self	342
Holthouser, L.[91]	1/26/93	182	Self	768
Hopkins, Emily	10/21/93	410	Schmidt	1455
Horn, Susan[92]	10/9/93	130	Zollman	589
Howell, Laura[93]	6/10/93	159	Kleitz	687
Hruska, Darlin[94]	11/5/92	396	Pate	1383
	3/4/93	32		1383
Huber, Janie[95]	4/8/93	234	Tallant	933
Hudson, Nora[96]	9/8/91	144	Zollman	589
	3/8/93	33		590
Hudson, Susan[97]	8/12/93	132	Zollman	589
Hughes, Deanna	9/4/92	146	Zollman	589
	3/4/93	34		590
Humphress, Debby[98]	8/5/93	260	Doyle	1002
Humphries, Terry	9/12/93	67	Self	311
Hundley, Terry[99]	11/27/93	336	Gant	1302
Hunt, Holly	11/27/93	16	Self	288
Hunt, Shane[100]	4/10/93	59	Self	248
Hurley, Pamela[101]	1/24/93	62	Self	263
Hurst, Ann[102]	1/3/94	188	Self	781
Hutchison, Betty	8/8/93	337	Gant	1302
Ingram, Donna	3/25/93	399	Zeigler	1405
Jackson, Jewell[103]	3/25/93	346	Clark	1319
Jenkins, Martha	1/15/93	93	Self	466
Jent, Vickie	3/3/93	329	Self	1289
Johansen, Mary	11/27/93	204	Self	828
Johnson, Dana[104]	6/4/93	261	Doyle	1002
Johnson, E. D.[105]	11/6/92	133	Zollman	589
	6/19/91	134	Zollman	589
	10/22/91	35		590
Johnson-Harsch, Jamie	3/30/93	47	Gentry	161
Jones, Cheryl[106]	11/26/93	347	Clark	1319
Jones, Judy[107]	4/20/93	131	Zollman	589
Jones-Fisher, Dana[108]	4/15/93	48	Gentry	161
Jordan, Mary[109]	6/13/93	413	Schmidt	1455
Jordan, Theresa[110]	1/25/93	58	Self	243
Kaiser, Lee	10/12/93	248	Self	976
Kaufling, D.[111]	2/5/93	110	Kaiser	506
Kays, Gina[112]	1/18/93	262	Doyle	1002
Keeler, Susan[113]	1/5/93	160	Kleitz	687
Kellerman, N.[114]	1/14/93	250	Kaiser	976
Kelly, Alan[115]	11/19/93	235	Tallant	933
Kelly, Margaret[116]	11/16/93	73	Self	358
Kelly, Pamela[117]	1/24/94	17	Tillow	118
	12/4/92	283	Doyle	1005
Kelty, Cynthia[118]	9/25/93	161	Kleitz	687
King, Dianne	11/16/93	286	Cecil, M.	1026
King, Jean[119]	10/28/93	348	Clark	1319
	10/13/92	452	Self	3760

King, Shirley[120]	11/9/93	400	Zeigler		1405
Kinney, M.[121]	5/12/93	263	Doyle		1002
Kinser, Brenda[122]	4/13/93	209	Johansen		828
Kitchen, Sue[123]	1/13/93	99	McGiveney		487
Kleinschmidt, L.[124]	1/28/93	176	Hodges		727
Kleitz, Vivian	10/19/93	148	Self		687
Kuban, Karen[125]	4/13/92	69(A)	Self		324
	1/6/94	69(B)	Self		324
Kutz, Jacqueline	7/13/93	264	Doyle		1002
Larvick, Janette	2/9/93	88	Self		D432
Lasher, Linda[126]	11/30/93	135	Zollman		135
Lawhorn, Joann[127]	10/19/93	349	Clark		1319
Laws, Patricia[128]	3/22/93	338	Gant		1302
Lebangood, Kathy	1/28/93	177	Hodges		727
LeBlond, M.[129]	1/13/93	100	McGiveney		487
Lee, Barbara[130]	2/27/93	36			1549[131]
Leffel, Gloria (Meredeth)	6/8/93	84	Self		389
Leitner, Lisa[132]	6/19/91	147	Zollman		589
	3/7/93	37			D590
Lockridge, Deborah	11/12/93	18	Self		292
Lohden, Theresa	10/4/93	57	Self		239
Long, Anna	11/16/93	215	Self		855
Lotze, Susan	10/28/93	94	Self		471
Lowe, Linda[133]	1/7/94	382	Pate		1377
	10/10/92	448	Self		3210
Lowery, Glenda[134]	2/23/93	411	Schmidt		1455
Lucas, Pennie[135]	9/13/93	85	Self		395
Lyons, Ed[136]	2/16/93	101	McGiveney		487
Malik, Jenica	10/4/93	414	Schmidt		1455
Malone, Norita	11/14/93	323	Self		1275
Mangin, Aimee[137]	1/13/93	111	Kaiser		506
Masden, Clara[138]	11/21/93	350	Clark		1319
Masri, Lisa[139]	8/9/93	55	Self		233
Mattmiller, R.[140]	1/25/93	178	Hodges		727
McAfee, Cynthia[141]	7/27/93	421			1493
McCarty, Karen	7/10/93	162	Kleitz		687
McClanahan, T.[142]	1/25/93	87	Self		407
McCubbin, Rita[143]	1/14/93	86	Self		400
McDonald, Nancy	11/18/93	418	Self		1458
McGiveney, Mary[144]	11/5/93	96	Self		487
McMillan, M.[145]	11/14/93	200	Miles, J.		789
Medley, Joseph	3/5/93	79	Kelly, M.		358
Meece, Karen[146]	12/10/93	194	Hurst		781
Meers, Gina[147]	12/5/93	265	Doyle		1002
Mercer, Gail[148]	1/25/93	136	Zollman		589
Metzger, M.[149]	12/25/92	236	Tallant		933
	1/9/94	237	Tallant		933
Miceli, Nicole	4/7/93	195	Hurst		781
Miles, Janet	10/27/93	199	Self		789
Miles, Valerie[150]	6/4/93	351	Clark		1319
Minrath, Mark	1/28/93	92	Self		461
Mirus, Rita	2/1/93	352	Clark		1319
Moore, Barbara[151]	4/20/93	137	Zollman		589
Morrison, Karen[152]	3/9/93	383	Pate		1377
Morrison, Lynn[153]	3/17/93	384	Pate		1377
Moyer, Christine	1/3/94	325	Cain, S.		1283
Mucker, Penny[154]	12/10/93	196	Hurst		781
Muckler, Sarah[155]	11/19/93	266	Doyle		1002
Muench, Alice[156]	1/24/92	170	Kleitz		689
	3/2/93	38			690
Mullins, Dawne[157]	2/1/93	138	Zollman		589
Murphy, Gina[158]	1/2/94	163	Kleitz		687
Myers, Stacy	8/12/93	51	Self (Doyon)		186
Nanz, Steve[159]	2/11/93	238	Tallant		933
Napier, Diana (Blevins)	8/23/91	267	Doyle		1002
(Davenport)	3/9/93	268	Doyle		1002
Naville, Linda	8/11/93	385	Pate		1377
Nelson, Paula[160]	4/24/93	269	Doyle		1002
Nelson, Tracey[161]	3/2/93	415	Schmidt		1455
Nethery, Lynne[162]	6/12/93	210	Johansen		828

Nix, Patricia[163]	12/13/93	80	Kelly, M.	358
Norris, Margaret	4/15/93	49	Gentry	161
O'Bryan, Terri	4/21/93	406	Self	1440
O'Neil, Dorothy[164]	11/16/93	388	Pate	1377
Oakes, Jane[165]	5/8/93	222	Wiseman	865
Ohlemacher, M.[166]	11/1/93	386	Pate	1377
Ohlemacher, S.[167]	10/29/93	387	Pate	1377
Orkies, Sheila[168]	3/10/93	317	Bagby	1223
Osbourn, M.[169]	1/30/93	270	Doyle	1002
Otte, Mary (Pole)	7/23/93	95	Lotze	471
Owen, William[170]	1/11/93	112	Kaiser	506
	11/4/93	223	Wiseman	865
Pate, Angela	12/30/93	368	Self	1377
Patterson, K.[171]	1/22/93	401	Zeigler	1405
Pawley, Mary[172]	3/2/93	65	Self	298
Payton, Carol	10/26/93	326	Cain	1283
Peak, Susan	1/11/94	403		1412
Phelps, Theresa	1/3/94	353	Clark	1319
Phillips, G.[173]	10/27/93	354	Clark	1319
Pope, Judy[174]	10/17/93	327	Cain	1283
Potter, Mary[175]	11/19/93	271	Doyle	1002
Price, Diana[176]	12/5/93	355	Clark	1319
Ragsdale, Judy[177]	1/14/93	117	Kaiser	506
Raper, P.[178]	3/25/93	169	Kleitz	687
Raymer, Kim	1/20/93	272	Doyle	1002
Reeder, Sheri[179]	5/21/93	389	Pate	1377
Reibel, Melody	2/17/94	229	Self	921
	12/8/92	230	Self	921
Reichle, Ann[180]	1/26/93	197	Hurst	781
	9/15/91	449	Self	3324
Rexcoat, Elizabeth	7/31/93	165		687
Reynolds, J.[181]	1/28/93	239		933
Rhoades, Terri[182]	1/2/94	167		687
Rhodes, Ellen (Hobbs)	6/12/93	166		687
Rice, Arlene	11/30/93	402		1405
Richeson, Linda[183]	1/1/94	164	Kleitz	687
Riggs, Stacey[184]	6/9/93	412	Schmidt	1455
Robinson, L.[185]	12/5/93	356	Clark	1319
Robinson, S.[186]	7/14/93	273	Doyle	1002
Rogers, Donna	12/11/93	81	Kelly, M.	358
Rudd, Elizabeth[187]	1/13/93	251	Kaiser	976
Ruhe, Susan[188]	1/18/93	318	Bagby	1223
Rumbaugh, S.[189]	11/22/93	139	Zollman	589
Salmon, Melissa	3/22/93	339	Gant	1302
Sandusky, Joanne	8/6/93	291	Self	1088
Sautel, Barbara[190]	3/9/93	219	Long	855
Sayers, Rebecca[191]	5/21/93	66	Self	304
Schanie, Cheri	12/2/93	60	Self	254
Schmidt, B.[192]	2/2/93	113	Kaiser	506
Schmitt, Betty	9/28/93	407	Self	1455
Schneider, Kim[193]	10/12/93	187	Holthouser	768
Schoenbaechler, S.[194]	4/28/93	417	Schmidt	1455
Schreck, Debbie[195]	10/28/93	391	Pate	1377
Schulz, Twylita	1/10/94	284	Doyle	1005
Schuler, Judith	3/23/93	390	Pate	1377
Scott, T.[196]	6/17/93	405	Self	1434
Scouller, T.[197]	9/28/93	240	Tallant	933
Seago, Mary[198]	1/19/93	274	Doyle	1002
Sears, Christine	3/6/93	39	Self	1358
Sedoris, Rhonda[199]	1/16/93	140	Zollman	589
Selvaraj, V.[200]	12/ /93			811
Shackleton, Jo Ann [201]	1/31/93	275	Doyle	1002
Shanks, Cheyl[202]	7/31/93	362	Clark	1319
Sharp, Janna[203]	9/28/93	361	Clark	1319
Sharp, Leda[204]	12/16/93	102	McGiveney	487
	6/10/91	436	Self	2302
	9/12/91	437	Self	2302
	11/14/92	438	Self	2302
Shelburne, C.[205]	7/15/93	276	Doyle	1002
	1/5/94	443	Self	2582

	8/23/91	444	Self	2582
Shepphard, Jean	3/23/93	211	Johansen	828
Shofner, B.[206]	10/19/93	360	Clark	1319
Shoulders, Judy	4/2/93	56	Self	235
Simms, Veronica	11/20/93	225	Self	879
Sivado, Carol	11/14/93	359	Self	1428
Skrine, Jean[207]	1/27/93	308	Gamble	1212
Slaton, Judy	1/9/94	322	Self	1272
Slayton, Kathy	11/30/92	171	Kleitz	689
	3/12/93	40		690
Sleder, Marsha[208]	1/4/94	328	Cain	1283
Smith, Harold[209]	3/19/93	358(A)	Clark	1319
Smith, Lisa	11/13/93	19	Self	1292
Smith, P.[210]	1/16/93	201	Self	796
Sohan, Margaret	2/25/93	41	Self	1388
Sorrells, Anne	8/10/93	20	Self	1444
Springate, A.[211]	10/28/93	416	Schmidt	1455
Steele, Jodie	1/6/94	404	Self	1424
Steinmetz, L.[212]	11/20/93	357	Clark	1319
Stewart, Holey[213]	5/23/93	198	Hurst	78
Stoess, Kathy[214]	12/4/92	277	Doyle	1002
	2/15/94	278	Doyle	1002
Stone, Rhonda[215]	1/3/93	279	Doyle	1002
Street, Mary[216]	12/16/93	103	McGiveney	487
Strohbeck, Susan	7/1/93	141	Zollman	589
Sullivan, M.[217]	11/14/93	241	Tallant	933
	9/19/92	440	Self	2483
Sullivan, Nancy[218]	2/25/93	42	Self	1019
Swift, Vicky	3/6/93	43	Self	1336
Tallant, Jeff[219]	1/26/93	231	Self	933
Taylor, Tammie[220]	12/3/93	422		1493
Thoma, Melanie	10/4/93	21	Self	1395
Thomas, Susan[221]	11/22/93	395	Pate	1377
	12/9/92	445	Self	2784
Tolbert, Sharon[222]	1/14/93	394	Pate	1377
Turner, Dorothy[223]	6/6/93	168	Kleitz	687
Vanetti, Bridget[224]	7/15/93	70	Self	330
Vincent, Theresa	2/8/93	121	Zollman	589
Waldrop, Marilyn	5/6/93	247	Self	952
Walker, Katherine	5/25/93	242	Tallant	933
Wall, Sharon	2/1/93	114	Kaiser	506
Wallace, P.[225]	4/7/93	319	Bagby	1223
Walter, Karen[226]	1/27/93	243	Tallant	933
Waltz, Diann	1/30/93	280	Doyle	1002
Warner, Bonnie[227]	4/12/93	50	Gentry	161
Webb, Trini[228]	7/21/93	281	Doyle	1002
Weber, Jane	1/22/93	46	Self (Gentry)	161
Welch, Pamela[229]	10/18/93	340	Gant	1302
Welch, Vickie[230]	6/23/93	22		1493[231]
West, Nancy[232]	1/31/93	282	Doyle	1002
Westfall, Anita	3/3/93	179	Hodges	727
Westfall, George[233]	10/17/92	288	Cecil	1033
	3/3/93	44		1033
	1/24/93	181		1033
Wethington, M.[234]	1/15/93	115	Kaiser	506
Whitehouse, C.[235]	4/7/93	309	Gamble	1212
Williams, Donna[236]	10/12/93	142	Zollman	589
Willoughby, H.[237]	2/8/93	104	McGiveney	487
	6/9/91	441	Self	2497
Wills, Vanessa[238]	2/1/93	244	Tallant	933
Wine, Mary[239]	1/14/93	392	Pate	1377
Winstead, Debra	1/14/93	82	Kelly, M.	358
Wiseman, Janet	11/4/93	220	Self	865
Wohlleb, Marijane	11/6/93	63	Clark	1319
Wooldridge, K.[240]	3/22/93	341	Gant	1302
Wright, Louise	10/13/93	252	Kaiser	976
Wrocklage, B.[241]	6/15/93	393	Pate	1377
Yates, Gloria[242]	1/23/93	180	Hodges	727
Yates, Jane[243]	5/22/93	423		1493
Yerta, Diane[244]	4/29/93	116	Kaiser	506

Young, Sherry[245]	4/25/93	364	Clark	1319
Zottman, L.[246]	4/21/93	245	Self	939
	10/11/91	246	Self	946

[1] When the sponsoring witness was not the card signer, the witness testified that he or she either saw the card signed or received the card from the person who signed the card. Where the name of the sponsoring witness has changed it will be indicated in this column and where the name of a card signer has changed, the change will be noted in the first column if the sponsoring witness is not the signer. Those cards for which a sponsoring witness is not listed were introduced by the General Counsel to be authenticated by comparing them with cards for which there was a sponsoring witness or with a document which was admittedly signed by the individual. Subsequently Respondent called many of the card signers whose cards were originally sponsored by someone else. These witnesses then identified their own cards. One witness, Vanaja Selvaraj, testified that she signed a card but apparently it has been misplaced.

[2] When called by Respondent, she testified that her married name is Munk; and that she signed and dated the card.

[3] When called by Respondent, she testified that she signed and dated the card.

[4] When called by Respondent, she testified that she signed and dated the card; that she was not real sure, specifically, what she was told about signing the card; that she read the card; and that she was not told to disregard the language on the card. The following appears at the top of the card: Authorization for Representation—I hereby authorize the Nurses Professional Organization, UNA, AFSCME, AFL–CIO to act as my collective-bargaining agent for wages, hours, and working conditions.

[5] Jones testified that when she signed the card she was not an RN but rather a nurse extern, she had not passed her state boards yet and she was not licensed at that time. Respondent initially sought a stipulation that this card should not be admitted but, counsel for the General Counsel argued that Augustine was on the list that Respondent provided dated January 5, the date of the request of recognition. Subsequently, Respondent did not object to the admission of the card. Jones received her RN license in April 1994. She testified that she was a registered nurse applicant (RNA) when she signed the card because she graduated in December 1993, she had completed all of her classes as of November 19, 1993, and she had applied for her RN license; and that as of November 19, l993, she did not yet have her temporary work permit which would allow her to serve as an RN.

[6] When called by Respondent, she testified that she signed the card.

[7] When called by Respondent, she testified that she signed the card.

[8] When called by Respondent, she testified that she signed the card.

[9] It was stipulated that when he signed the card he was a mobile RN.

[10] When called by Respondent, she testified that she signed the card.

[11] When called by Respondent, she testified that she signed the card; that before she signed the card someone passing out literature outside the hospital said that they needed a certain number of cards to get a vote; and that she read the card before she signed it and no one told her to ignore what was printed on the card.

[12] It appears that a "3" is written over a 9 "2" in the year on the date line. It is noted that this was 13 days into the new year. When called by Respondent, she testified that she dated the card right before this last election and she thought that the number in question looked like a "3."

[13] When called by Respondent, Judith Basham testified that she signed the card; that she did not remember what she was told about the card before she signed it; and that she read the card and no one told her to ignore what was printed on the card.

[14] She testified that she was told that the purpose of the card was "for us to have a vote to see whether we could be represented;" that she was not told that she would be joining the Union by signing the card; and that she read the card before signing it and no one told her to ignore the language on the card.

[15] When called by Respondent, she testified that she signed the card.

[16] When called by Respondent, she testified that she signed the card.

[17] Diane Bielefeld testified that she read the card before signing it; that she was given the card by Arlene Rice who told her that signing the card "does not mean that you are absolutely for the Union, this was just to enable—about [sic a vote] to become possible"; and that Rice's statement seems to be inconsistent with what is written on the card.

[18] When called by Respondent, William Binggeli testified that in 1993 he was an RN and he, among others, rotated in the charge nurse position when the charge nurse was not there; that he signed and dated the card; and that he was an RN when he signed the card.

[19] When called by Respondent, she testified that she signed the card. She answered "[y]es" when asked by one of Respondent's counsel "[d]id she [Doyle] tell you that that was the only thing the card would be used for, to get a vote." Further Bishop testified that she did not read the card before signing it because it "is just a small card, it doesn't' have very much on it . . . " that she read some of the printed material on the card to be able to fill it out; that she read at least three other lines above the first blank line she filled in; that Doyle did not tell her to ignore the language on the card; and that she did not remember what Doyle said; and that she signed another NPO card (in 1991) and she read that card before she signed it. Subsequently she testified that she remembered nothing about her conversation with Doyle and that she could not remember whether she read GC Exh. 257 before signing it. On rebuttal Doyle testified that she told Bishop that they needed a certain number of cards signed "for the NPO to represent us to get a vote for a union"; and that she did not remember if she told Bishop that the only purpose of the card was to get an election.

[20] When called by Respondent, she testified that she signed the card.

[21] When called by Respondent, she testified that she signed the card; and that Tallant told her the card was to be able to have the opportunity for the nurses to vote and he encouraged her to read the card before signing it.

[22] When called by Respondent, she testified that she signed the card and that when Patty Clark gave her the card she said that the purpose was "[j]ust that they would represent us."

[23] When called by Respondent, she testified that she is an RN and a research coordinator, and her surname is now Tutwiler; that in January and March 1994 she was a research coordinator; that she signed and dated the 12/2/92 card; and that she was told by NPO supporters that the card was to determine whether or not there would be enough interest to have a union formed at the hospital.

[24] When called by Respondent, Elizabeth Brantley testified that she signed and dated the card.

[25] Subsequently David Breitmeyer was called as a witness by Respondent and he testified that he signed the card; and that he was told that they needed more cards so that they could get a vote for the Union and he would be represented by the Union. He also testified that he read the card before signing it.

[26] When called by Respondent, she testified that she signed the card, Flener told her that if a certain number of people signed the cards they would have a collective-bargaining organization such as NPO, and she read the card before signing it.

[27] When called by Respondent, she testified that she signed and dated the card.

[28] When called by Respondent, she testified that she signed the card; that Kelly told her that the card was "to gather enough signatures to begin talks to start union-type activities," that she did not remember Kelly saying anything about an election before she, Brown, signed the card; and that she did not remember if she read the card before she signed it.

[29] When called by Respondent, she testified that she signed the card received as GC Exh. 105; that she read the card; and that it is her signature and handwriting on GC Exh. 24.

[30] Theresa Browning testified that Arlene Rice gave her the card to sign; that Rice told her that if enough employees signed the cards they would have a vote; that Rice did not say Browning was joining the Union; and that she was not sure if she read the card before signing it.

[31] Browning testified that she wrote the date on the card; that the last digit in the year "9?" is not legible but she believed it would be a "1" or a "2"; and that the digit in question is not the same as the "2" she wrote in her telephone number and in her zip code or the "3" she wrote in her department number and shift.

[32] Burba testified that she was not sure who gave her the card; that she believed Vivian Kleitz gave her the card; that she could not remem-

ber signing the card; that at some point in time Kleitz told her that if so many cards were signed there would be a vote but she was not sure Kleitz said this when she, Burba, signed her card; that Kleitz said that getting an election was the only reason they needed her signature on the card; and that she believed that she read the card before she signed it. Kleitz testified that she did not ask Burba to sign an authorization card; that she did have discussions with Burba after she signed the card; that after Burba signed the card she asked Kleitz about the process; that she told Burba that there had to be a percentage of cards signed; and that she never told Burba that the only purpose of the card was to get an election. On cross-examination, Kleitz testified that she never specifically talked to Burba about signing a card before she signed it.

[33] Subsequently Respondent called Marguerite Burch and she identified the card as hers.

[34] Subsequently she was called by Respondent and she~ testified that she signed the card; that Holthouser told her that if she signed the card she would be more informed about what was going to happen; and that he did not say that by signing the card she was joining the Union. She also testified that she read the card before signing it.

[35] When called by Respondent, she testified that she signed the card.

[36] When called by Respondent, she testified that her married name is Buffkim; that she signed and dated the card; that Kleitz told her that the card meant that she wanted to be able to vote for or against the Union; and that she could not say with certainty that she read the card before signing it.

[37] When called by Respondent, she testified that she signed and dated the card and that Kaiser told her that the card would be used as a basis for representation by the Union and if a majority of cards are turned in, an election would be held.

[38] When called by Respondent Lewellyn Carmichael testified that she signed the card; that Corbett told her that signing the card would help to reach a certain number in order for the union issue to be put to a vote and there was no obligation to belong to the Union; that she read the card before she signed it; that she recalled that while the card states "I hereby authorize the Nurses Professional Organization . . . to act as my collective bargaining agent. . . .," Corbett said that authorization was only if the Union was voted in; that she did not recall Corbett telling her to ignore the language on the card; that she did not recall signing any other union card; and that she did sign another authorization card in August 1991.

[39] When called by Respondent Christopher Carr testified that he signed the card.

[40] She testified that she was told by an NPO supporter that the purpose of the card was for the hospital to be able to have a vote; that she was not told that it was for any other purpose; and that she read the card before signing it and she was not told to ignore what was written on the card. ~

[41] When called by Respondent, she testified that she signed and dated the card; and that Kaiser told her that the card was to have the NPO be her representative at that time.

[42] When called by Respondent, she testified that she signed and dated the card.

[43] When called by Respondent he testified that he signed the card; that Pate explained that the purpose of the card was to have NPO as the employees' bargaining agent; and that Pate might have told him that they needed a certain percentage of the cards signed before they could get an election at the hospital.

[44] Elizabeth Cockerel testified that she was told that the purpose of the card was for the nurses to have an election; that she read the card; and that no one told her to disregard what was printed on the card before she signed it.

[45] When called by Respondent, she testified that she signed and dated the card.

[46] When called by Respondent, she testified that she signed the card; that Flener (Zollman) told her that the purpose of the card was to give her a right to vote and they wanted to have an election, and they wanted to see how many people they could get signed up; and that she read the card before she signed it.

[47] Respondent objected to the use of this card for majority purposes and the General Counsel took the position that a card is valid if it was signed and dated within a reasonable period from the date of the request for bargaining.

[48] When called by Respondent, she testified that she signed the card; that before she signed the card Ann Hurst told her that signing the card did not necessarily mean that she was joining the Union; that Hurst did not say anything about an election at that time; and that she read the card before signing it.

[49] When called by Respondent, she testified that she signed the card on the date indicated.

[50] When called by Respondent, she testified that she signed the card.

[51] Barbara DeFerraro testified that she was told that if enough cards were signed there could be a vote; that she was not sure who told her this and she did not read the card before signing it; and that she was certain that she signed only two cards while at Audubon. When three other cards she signed, which predate the one in question, were shown to her she testified that she did not read any of the cards. Patricia Heck testified that on September 20, 1995, while she was in the witness room waiting to testify, Deferraro said that she did not read the card before signing it and she knew that she was saying the right thing "because Joanne Anderson told me I was." This testimony was not offered for the truth of the matter asserted. Anderson testified that she did not have any discussion with Deferraro regarding her testimony at the hearing.

[52] When called by the Respondent, she testified that she signed the card.

[53] When called by Respondent, she testified that she signed the card.

[54] She testified that she was told that the purpose of the card was to get an election, she read the card and no one told her to disregard what was printed on the card before signing it.

[55] When called by Respondent, she testified that she signed the card.

[56] When called by Respondent, she testified that she signed both cards; that before she signed the 7/11/91 card, Kelly told her that it was to support the Union coming into Audubon and if the Union won the election, she would be asked to join the Union; and that she signed the second card, dated 11/2/92, because the first one seemed to be lost.

[57] When called by Respondent, she testified that she signed the card; and that someone at NPO headquarters told her that the card would be used to petition for a vote.

[58] Her married name is Wilson. When called by Respondent~ she testified that she signed the card.

[59] When called by Respondent, she testified that she signed the card.

[60] When called by Respondent, she testified that her surname is now Coomes; that in May 1993 she had her temporary work permit and she was working at Audubon as a RNA; and that she signed and dated the card.

[61] When called by Respondent, she testified that she signed the card.

[62] When called by Respondent, she testified that she signed and dated the card; that before she signed the card Anna Long told her the card was to demonstrate a certain percentage so that an election could be held; and that she read the card before she signed it and Long did not tell her to disregard what was printed on the card.

[63] He testified that he was told that the purpose of the card was to get an election, he read the card and he was not told to ignore the language on the card before signing it.

[64] His W-4 was received as GC Exh. 424 for purposes of comparison. When called by Respondent, he testified that he signed the card.

[65] When called by Respondent, she testified that she signed the card.

[66] When called by Respondent, she testified that she became a charge nurse in January 1993; that she signed and dated the card; and that Hodges told her that the card would allow a vote to be held at Audubon, and they had to have 70 percent of the cards signed. She answered "[y]es" when one of the counsel for Respondent asked "[d]id she [Hodges] tell you that the card would only be used to petition for a vote." On cross-examination she testified that she believes that she read the card before signing it; that Hodges did not tell her to ignore what was written on the card; and that Hodges came in and asked if anybody would sign a card to allow the Union to come in and petition for a vote and that was the end of the conversation. On rebuttal, Hodges testified that Franke indicated that she had an interest in a union; that she told Franke that before a union could come in they had to have an election and they had to have a certain percentage of cards signed before the

petition could be filed for an election; and that she did not tell Franke that the card meant that she was for the Union, or it would only be used to petition for a vote. On cross-examination Hodges testified that Franke asked her for a card; that she told Franke that by signing the card she was saying that she wanted a union in the hospital; that she told Franke that first there would have to be an election but that was not the sole purpose of the card; and that she asked Franke to update her card and she signed a second card.

[67] When called by Respondent, she testified that she signed the card.

[68] Charlotte Freiberger testified that Tillow or Jena Zeigler, who was president of the Union, told her that she should sign the card so she would be allowed to vote, "if an election came about, you would be allowed to vote"; that they did not tell her that by signing the card she would be joining the Union; that she read the card; that no one told her to ignore the language on the card and she questioned the language on the card and either Tillo or Zeigler said that this just meant that you could vote; that she signed an NPO union authorization card in 1991 (GC Exh. 367), with the same language on it, she read it before signing it and no one told her to ignore the language on the card; that either Tillo or Zeigler told her that the NPO needed to receive a sufficient number of cards in order to petition for an election; that she became a clinical coordinator between March and November 1994; that she voted in the 1994 election; that she did not remember if she voted a challenged ballot; and that at the time of the 1994 election she was a charge nurse. Tillo testified that Freiberger was active in the 1989 NPO campaign at Audubon; that Freiberger subsequently made a radio ad supporting the NPO; that she recalled Freiberger signing GC Exh. 367 at the NPO kickoff meeting in June 1991; that at this meeting she said that the purpose of the card was to get a committment; that she did not tell Freiberger at this meeting that the purpose of the card was to get an election; that she did not have any conversation with Freiberger before she signed the card received as GC Exh. 28, concerning the purpose of the card; that she never told Freiberger that the purpose of the card received as GC Exh. 28 was to be able to vote or so that an election could be held. On rebuttal Zeigler testified that she never told Freiberger that she had to sign an authorization card in order to be eligible to vote in an election; that she never heard Tillo tell Freiberger this; and that Freiberger was the company's observer at the 1994 election.

[69] When called by Respondent, she testified that she signed the card; that when Jeff Tallant gave her the card he asked her if she would like to join the Union; and that she told Tallant that she was interested in it and she signed the card.

[70] When called by Respondent, she testified that she signed GC Exh. 29; that Clark said that the purpose of this card was for the employees to have a vote; that she read the card before signing it; and that she thought that she signed another card before this one.

[71] When called by Respondent, she testified that she signed the card; that Kelly did not tell her that by signing the card received as GC Exh. 77 she would be joining the Union; and that she signed the NPO authorization cards received as GC Exhs. 434 and 435; and when she signed the latter in 1991, Kelly told her that the purpose of the card was to join the Union.

[72] When called by Respondent, she testified that her surname is now Sims; that she signed and dated the 3/4/93 card; that when she was signing the card Flener (Zollman) told her that the card was to have an election to see how many nurses wanted to get the Union; and that she read the card before she signed it and no NPO supporter told her to ignore the language on the card.

[73] When called by Respondent, she testified that she signed the 1992 card when her charge nurse, Linda Richeson, told her to sign it; that the signature on the 1994 card looks like hers but the telephone number on that card would have been incorrect for that date; that she could not testify that she dated the 1994 card because "my four's are very straight up and down, just like the one's on the . . . card in "92"; that she did not know if the signature on the 1994 card was hers; and that at about the time the second card is dated she had personal problems, she temporarily moved out of her residence on January 2, 1994, and it is possible that she mistakenly used the address and telephone number she had since 1988 on the January 6, 1994, card and signed the 1994 card. Earlier Pate had testified that Glisson signed the 1994 card in her presence in the hold room of surgery while they were working there together. In writing the zip code on the 1992 card Glisson used a "4" which is the same as the "4" on the date line on the 1994 card in that in writing the left side of the "4" Glisson begins from the left, proceeds to the right and then proceeds to the left until she takes the line at about a 90 degree angle to the right. The stroke was more exaggerated on the 1994 card but that undoubtedly was the result of the emotional distress she was suffering at the time. The "6" on the date line of the 1994 card is the same as the "6" on the phone line of the 1992 card. Glisson used a dash to separate the shift times on the 1992 card just as she used dashes on the date line on the 1994 card. Regarding her signature on the 1994 card, every letter is the same as her admitted signature on the 1992 card. The fact that the "y" in her signature on the 1994 card is not exactly the same as the "y" in her signature in the 1992 card does not warrant the altering of this conclusion. Glisson filled out, signed, and dated the 1994 authorization card.

[74] When called by Respondent, she testified that she signed the card; that she was told by Karen Patterson that "it gave the Union the right to come in and take a vote"; and that she read the card before signing it.

[75] When called by Respondent, she testified that there are two Barbara Grays at Audubon; and that she signed the authorization card received as GC Exh. 379.

[76] When called by Respondent, Sherry Greenwood testified that she signed the card.

[77] When called by Respondent, Patricia Grizzle testified that she signed the card; and that she requested the card from Joann Sandusky.

[78] When called by Respondent, she testified that she signed the card; that she signed a card the year before this one; that with respect to one of the cards, she was not sure which one, Holthouser said that it was to show support for the Union and that signing the card did not make you a member of the Union; and that she read the card before signing it and she asked Holthouser if it would automatically make her a member of the Union and he said "no."

[79] When called by Respondent, Lauraetta Hardin testified that she signed the card; that Gloria Gant told her that the card was "for getting the Union into Audubon"; and that Gant told her to read the card before signing it.

[80] When called by Respondent, she testified that she signed the card; that she did not remember any discussions with anyone from the NPO; that she remembered that she was told that it did not commit her to voting for the Union but she could not recall who told her this; and that she read the card before signing it.

[81] Mary Harris-George's W-4 (GC Exh. 432), was received for purposes of comparison. When called by Respondent, she testified that she signed both cards; that before she signed the card dated 3/31/93 Flener told her that she had to resign if she wanted union representation for the second election; that Flener said that the Union had to win the election before it would represent her; that she did not recall specific conversations; that Flener said that the card was for union representation as far as allowing it to come in for an election; that she did not recall Flener's exact words; and that she read the card before she signed it and Flener did not tell her to ignore what was printed on the card.

[82] Her married name is Bickett. When called by Respondent, she testified that she signed the card and that she was told that the card was to show support for the NPO.

[83] When called by Respondent, she testified that she signed the card.

[84] When called by Respondent, she testified that she signed a union authorization card in December 1993.

[85] When called by Respondent, Mary Heichelbrech testified that she signed and dated the cards; that she took a leave of absence in January 1994 to do a travel assignment at a hospital in Las Vegas, Nevada, and she returned to Louisville in June 1994 and went to work in the ER at Columbia's Suburban Hospital; that when she left to go to Las Vegas, Audubon gave her a leave of absence which gave her the right to go back to employment with Audubon once her assignment was over; that she stayed on Audubon's pool; that she did not have to start over as a new employee at Audubon; and that she probably worked at Audubon as a pool nurse one day in June, July, or August. Anderson testified that RNs quite frequently move between Audubon and its sister hospitals and they retain their company seniority unless there is a greater than a

90-day break in service; and that the 90-day period limitation did not apply at Audubon before Columbia became involved.

[86] When called by Respondent, she testified that she signed the card.

[87] When called by Respondent, she testified that she signed GC Exh. 109. This witness was not asked if she signed GC Exh. 221, dated "11/4/93." But the sponsoring witness of that card testified that Heishman perosnally handed it to her and Heishman did not deny that it was her card.

[88] Subsequently she was called as a witness by Respondent and she testified that she signed the card; that Bagby said that the purpose of the card was to have a vote for the Union "and that I was recognized with the NPO"; and that joining the Union was her purpose for signing the card albeit she could not remember Bagby saying this. She also testified that she obtained her understanding of the purpose for signing the card from the language on the card.

[89] When called by Respondent, she testified that she signed the card; Pate said that signing the card did not mean that she, Hibbs, was asking for the Union to represent her but only that they needed enough signatures to get a vote and she did not have to vote for the Union; that Pate or another union supporter told her that they wanted her to sign a card in order to have an NLRB election; that she read the card before she signed it and Pate did not tell her to ignore the language on the card.

[90] When called by Respondent, she testified that she signed the card; that Patterson told her that signing the card did not mean that she was voting yes or no it just meant that if they get so many cards that it will come to a vote; and that she read the card and the person soliciting her signature did not tell her to disregard the language on the card. Also Hicks testified that she did not recall having any discussions with Hodges about signing an authorization card.

[91] Lawrence Holthouser's job description was received as R. Exh. 8.

[92] When called by Respondent, she testified that she signed the card.

[93] When called by Respondent, she testified that she signed the card; that she could only recall Vivian Kleitz telling her that the card was the way that she would receive information about the Union; that Kleitz told her to read the card before signing it; and that she believed that she read the card.

[94] When called by Respondent, she testified that she signed both cards.

[95] When called by Respondent, she testified that she signed the card.

[96] When called by Respondent, she testified that she signed the card, GC Exh. 33.

[97] When called by Respondent, she testified that she signed the card.

[98] When called by Respondent, she testified that she signed the card; that Doyle told her that they needed a few more cards to be able to get a vote; that she did not remember if she read the card before signing it; that she asked Doyle if signing it meant that she was going to vote "yes" and Doyle said it was just to get a vote; and that Doyle did not tell her to ignore what was stated on the card. On rebuttal Doyle testified that she told Humphress that it was an authorization card for the NPO to represent the nurses.

[99] When called by Respondent, she testified that she signed the card; that Gant told her that they were trying to get enough signatures to have a vote; that she read the card before she signed it and Gant did not tell her to ignore what was written on the card; and that she could not remember exactly what Gant said.

[100] He testified that he was told that the cards were to obtain a vote, he read the card and he was not told to ignore what the card said before signing it. Also, he testified that he was a charge nurse on January 5. Kleitz testified that she may have talked to him but she thought it was after he had signed the card.

[101] She testified that she was told by Carol Hodges she would not have to vote for the Union and that the card was just to be able to have a vote; and that she did not read all of the card. On rebuttal Hodges testified that she asked Hurley if she was interested in signing a card and Hurley responded she was not because she did not want to pay union dues and if there was a strike, she did not want to leave the patients; that when she explained the benefits of the Union Hurley said that she hated the NPO; and that she never told Hurley that the card was only to get an election. On cross-examination Hodges testified that after Hurley said that she hated the NPO she, Hodges, saw Hurley's signature on a card. Hodges is credited. The testimony of someone who testifies that she did not read what she signed when what she signed was very short and would have taken very little time to read is not reliable.

[102] Her job description was received as R. Exh. 9.

[103] When called by Respondent, she testified that she signed and dated the card.

[104] Subsequently she was called as a witness by Respondent. She testified that she signed the card; and that before she signed the card Doyle told her that the purpose of the card was to be able to get a vote and get more information. She also testified that she read the card before signing it.

[105] When called by Respondent, Ethel Darline Johnson, whose surname is now Lester, testified that she signed all three cards.

[106] When called by Respondent, she testified that she signed and dated the card; that at the time she signed the card she had received an offer of employment by Audubon as an RN; that her work permit (R. Exh. 61), is dated January 3, 1994; that therefore she did not have a work permit when she signed the card on November 26, 1993; that she received her offer of employment as an RN before the effective date of her work permit, January 3, 1994; that she believed that she received her offer in November 1993 from Joan Wempe to work on 3 East; and that she was never a nurse extern notwithstanding the fact that she is listed as such on R. Exh. 51.

[107] When called by Respondent, she testified that she signed the card; that before she signed the card Flener (Zollman) told her that the Union needed to get a certain number of cards signed in order to get an election; that Flener said that that was the only purpose; that she read the card before signing it and Flener did not tell her to disregard what was printed on the card; that she signed a card in 1991 and she believed that Flener told her at that point in time that it was for an election; and that in testifying about what she was told about the purpose of the more recent card she may have actually been testifying about what she was told when she signed the older card.

[108] When called by Respondent, she testified that she signed the card.

[109] When called by Respondent, she testified that she signed the card and that she was told by Schmidt that if they all joined together and formed a union the staffing problems would cease to exist, and they were working toward some sort of union in the future.

[110] In response to a leading question, she testified that she was told by some unidentified person that the only reason for signing the card was to have an election, she did not remember whether she read the card but no one told her that the card was for some purpose inconsistent with what the card states. The card reads, in part: "Authorization for Representation, I hereby authorize the Nurses Professional Organization, UNA, AFSCME, AFL–CIO to act as my collective bargaining agent for wages, hours and working conditions."

[111] When called by Respondent Dorothy Kaufling testified that she signed and dated the card.

[112] When called by Respondent, she testified that she signed the card; that she spoke to Dea Doyle about the purpose of the card but she could not recall whether she spoke with Doyle before or after she signed the card; that Doyle said that the card would allow the employees to have a vote; and that she read the card before filling it out.

[113] When called by Respondent, she testified that she signed the card; that the purpose of the card was to get an election but she did not remember who told her this; that she assumed that she read the card before signing it; and that no one told her to ignore the language on the card.

[114] When called by Respondent, Norma Kellerman testified that she signed the card and that Lee Kaiser told her it was an authorization for representation.

[115] When called by Respondent, he testified that he signed and dated the card.

[116] She testified that she was a charge nurse during 1993; that in this position she assigned patients to employees on a daily basis and she engaged in direct patient care with her patients; that she wrote up staffing sheets for the month but she took her information from the days the RNs put down on the general schedule that they would work or they were assigned on the general schedule to work; that she did not make a

decision as to what staff would actually be there on any given shift; that she just took the names off the general schedule and filled out the staffing sheet; that patient care attendants (PCAs) assisted her in giving baths or helping her turn the patient; that she, like any other RN, would ask or tell a PCA to give a patient a bath; that she made up patient care plans for her own patients; that she did not administer discipline; that she never recommended discipline and this was one of the functions of the nurse manager; that if she was having a disciplinary problem she would tell the nurse manager; that on one occassion she had a problem with another employee's attutude and she, Kelly, spoke to the nurse manager but she, Kelly, did not recommend any specific discipline; that she could not recommend discipline as a designated charge nurse; that she could recommend to her nurse manager that someone be disciplined; that in the course of administering nursing care to a patient she may request the assistance of a PCA; that in 1993 she performed peer evaluations; and that she called people into work if they were needed in 1993 for the night shift.

[117] When called by Respondent, she testified that she signed and dated the cards; that Doyle told her that the 1992 card was going to be used to get an election and there needed to be so many cards signed before the NPO could petition for a vote; and that she read both cards before signing them.

[118] When she was subsequently called by Respondent, she testified that she is married and her surname was Morgan; that she signed the card; that Kleitz might have given her the card; that Kleitz told her that there was no obligation to vote for the Union and the card would be an indication that she wanted some more information about it; and that she probably did not read the card before signing it. On cross-examination she testified that she felt pretty sure that Kleitz was the one who gave her the card.

[119] When called by Respondent, she testified that she signed and dated the card; that before she signed the card Flener told her that the card only meant that they might have a vote on whether they wanted the Union; that she asked Flener if the card meant that she, King, was part of the Union and Flener said "no, this is only for the vote"; that she did not think she read the card before she signed it; that before she signed the card Flener told her how the Union might help the nurses, to get the Union in there had to be an election, and to get the election a certain number of cards had to be signed; that she did not remember signing any other union cards; that she did sign GC Exh. 452; that she could not remember who gave that card to her; and that she remembered Flener telling her that they needed so many cards signed in order to have a vote and that the card needed to be updated because it was only good for a year and that was all that was said.

[120] When called by Respondent, she testified that she signed the card.

[121] When called by Respondent, Michelle Kinney testified that she signed the card and that Doyle told her that if she signed the card, "it was just in favor of the Union."

[122] When called by Respondent, she testified that she signed and dated the card.

[123] When called by Respondent, she testified that she signed and dated the card; that McGiveney told her that if enough people signed the cards there would be a vote on whether the employees wanted a union or not, and if the employees voted the Union in, then the organization would represent the employees; and that she probably read the card before she signed it and McGiveney did not tell her to ignore what the card said.

[124] When called by Respondent Laurie Kleinschmidt testified that her married name is Keho and that she signed the card.

[125] In response to a leading question with the word "only" in it, she testified that she was told that the cards were needed to have a vote. She also testified that she read the card before signing it; and that no one told her to ignore what was printed in the card or said anything which was inconsistent with what was printed on the card.

[126] When called by Respondent, she testified that she signed and dated the card; and that Flener (Zollman) told her that by signing the card she wanted the Union to represent her in collective bargaining.

[127] When called by Respondent, she testified that she signed the card.

[128] When called by Respondent, she testified that she signed and dated the card.

[129] When Respondent called her Marlene Leblond testified that she signed the card; that she could not remember what McGiveney told her about the purpose of the card; that another NPO supporter, Betty Schmidt, told her that the card would be used to bring a vote; and that she read the card before she signed it and no one told her to ignore what was printed on the card.

[130] Her W-4, GC Exh. 428, was received for purposes of comparison. Respondent indicated that it did not object to the comparison. The card with which the comparison is to be made was marked for identification as GC Exh. 36. GC Exh. 428 was received at Tr. 1493. Subsequently she was called by Respondent and testified that she signed the involved card.

[131] Id.

[132] When called by Respondent, she testified that her married name is Nolley; that she signed GC Exh. 37; and that NPO supporters said that the purpose of the card was to get a vote.

[133] When called by Respondent, she testified that she signed and dated the 1994 card; that Maggie Kelly told her that the card showed interest in having a vote but she could not remember the exact words Kelly used; that she asked Kelly "I'm not signing yes, that I want a union, right [a]nd she'd say [w]ell, no, it's just in order to get the NLRB to set up a vote for us"; that she read the card before she signed it and Kelly did not tell her to ignore the language printed on the card; that she signed and dated the 10/10/92 authorization card; that she read that card before she signed it; and that she did not think that Kelly asked her to sign another card after 10/10/92.

[134] When called by Respondent, she testified that she signed the card; that Schmidt told her that the cards would indicate people that were interested in having a union vote for the nurses; and that she read the card before signing it.

[135] She testified that she was told that a certain number of people had to sign the cards for there to be an election; that she read the card before she signed it; and that she was not told to disregard what was printed on the card.

[136] When called by Respondent he testified that he signed the card; that before he signed the card Betty Schmidt told him the card was to have a vote to get the Union into the hospital, to sign this if you want the Union, and McGiveney told him that the card was to get a vote to get the Union in.

[137] When called by Respondent, she testified that she signed the card; and that Kaiser told her before she signed the card that it was "to represent me with the union."

[138] When called by Respondent, she testified that she signed and dated the card; that Clark said that they needed a certain number of nurses to sign to be able to hold elections to decide if the nurses would be represented by a union; and that she read the card before she signed it and Clark did not tell her to ignore the language on the card.

[139] It is noted that the card reads "Lisa El Masri." In view of the fact that this individual gave the name "Lisa L. Masri" on the record and answered questions put to "Ms. Masri," I have included her card under "M" and not "E."

[140] When called by Respondent, Rose Mattmiller testified that she signed the card. She also testified that her surname is now Gaskins; that when she signed the card she was told that it was to get an election and to support getting a union into the hospital; and that no one told her to ignore the language on the card which she "skimmed over."

[141] Her W-4 form (GC Exh. 425), was received for purposes of comparison.

[142] Tammy McClanahan, in answering a leading question, testified that Karen Paterson told her that the only purpose of the card was to get an election and that she, McClanahan, had to sign the card in order to be able to vote; that she thought that she read the card before she signed it; that she was either misled or misunderstood the purpose of the card; and that as an RN she directed patient care assistants (PCAs) and unit secretaries to perform certain functions, she did a patient care plan every day and she worked up a plan of action which others were expected to follow.

[143] She testified that she did not recall who gave her the card but she recalled that she was told that it was to get an election; and that she read

the card before signing it and she was not told to disregard the printing on the card.

[144] Her job description covering her position during calendar year 1993 was received as R. Exh. 4.

[145] When called by Respondent, Marla McMillion-Byrd testified that she signed the card; that when she signed she was a night-shift charge nurse; and that Rice told her that the card was for joining the Union.

[146] When called by Respondent, she testified that she signed the card; that Lee Kaiser told her only that she needed to update her 1991 union authorization card; and that she read the 1993 card before signing it and no one told her to ignore what was written on it.

[147] When called by Respondent, she testified that she signed the card; that Doyle told her it was to get a vote; and that she did not read the bottom of the card before signing it and no one told her to ignore what was written on the card.

[148] When called by Respondent, she testified that she signed the card.

[149] When called by Respondent Margaret Metzger testified that she signed both cards.

[150] When called by Respondent, she testified that she signed the card.

[151] When called by Respondent, she testified that she signed the card and that she was told that it was to be able to hold an election and "if the Union would pass then—uh, we would be represented by them and then we would be members . . . ."

[152] When called by Respondent, she testified that she signed the card.

[153] When called by Respondent, she testified that she signed the card.

[154] When called by Respondent, she testified that she signed the card.

[155] When subsequently called by Respondent, she testified that she signed the card and she spelled her name Meckler.

[156] When called by Respondent, she testified that she signed both cards and that she probably read GC Exh. 38 before signing it.

[157] When called by Respondent, she testified that her surname is now Cunditt; and that she signed and dated the card.

[158] When called by Respondent, she testified that she signed the card.

[159] Subsequently he was called as a witness by Respondent and testified that he signed the card; and that individuals from the NPO, namely Nancy McDonald or Lonnie Holthouser, told him that the purpose of the card was "to enable nurses to vote on—. . . uh, to have Union representation." He also testified that he read the card before signing it and no one told him to disregard what was written on the card.

[160] Subsequently she was called by Respondent and she testified that she was a charge nurse from 1991 until June 1994; that she signed the involved card; that Doyle said that the purpose of the card was so that the employees would be able to vote on whether or not they wanted the Union; and that she read the card before signing it.

[161] When called by Respondent, she testified that she signed and dated the card.

[162] When called by Respondent, she testified that her married name is Taylor; and that she signed and dated the card.

[163] When called by Respondent, she testified that she signed and dated the card.

[164] When called by Respondent, she testified that she signed and dated the card.

[165] When called by Respondent, she testified that she signed the card; that she read the card before she signed it; and that Kaiser said that by signing a card the Union would be able to petition the Board for an election.

[166] When called by Respondent, Michael Ohlemacher testified that he signed the card and that Rice or Pate told him that it was an indication of his desire to have the NPO represent him in collective bargaining. He also testified that he was a nurse extern when he originally started working and then he became an RNA; that to become a RNA he had to graduate nursing school, file to take the exam and get a permit when he applied to take the exam; that he had to apply for an RNA position and it was not guaranteed; that he applied for the RNA position in November or December 1993; that he was offered and then went into an RNA position in January 1994; and that the nurse recruiter in the Audubon personnel department telephoned and offered him the position before he received his permit. R. Exh. 51 indicates that he was an extern who was hired 3/93, he received his permit 1/3/94 and he became an RNA 1/17/94.

[167] When called by Respondent, Stephanie Ohlemacher testified that she signed the card.

[168] When she was called by Respondent, she testified that she signed the card.

[169] Subsequently Michelle Osbourn was called by Respondent and testified that she signed the card; and that regarding the purpose of the card, Doyle told her that it was to obtain more information about the organization, if enough cards were signed the Union would be able to petition for a vote at the hospital and then the employees would be able to "vote on the Union, as to whether or not we wanted to be a participant in the Union as a whole." Osbourn was pretty certain she read the card before signing it.

[170] When called by Respondent he testified that prior to signing the 1/11/93 card he was told that it was just to give the Union a chance for an election; that he signed the 11/4/93 card; that he read both cards before signing them; that he could not remember the exact words that were used when he was told the purpose of the cards, namely that the card was being used for an election; that he was not sure who discussed the purpose of the card at a meeting at the home of one of his coworkers; that he did not remember what words were used when they talked about the card being used for an election; and that he was not told to ignore the printed language on the card.

[171] When called by Respondent, Karen Patterson testified that she signed the card.

[172] She answered "thats right" to the following question: "[a]nd these people told you, did they not, they wanted you to sign the card just to get an election." She also testified that she read the card; that no one told her to ignore the language on the card and no one told her anything inconsistent with the language on the card.

[173] When called by Respondent Glenda Phillips testified that she signed the card.

[174] When called by Respondent, she testified that she signed the card; and that either Cain or Flener said that the card would be used to have a vote.

[175] When called by Respondent, she testified that she signed and dated the card.

[176] When called by Respondent, she testified that she signed the card; that she was told that they needed a certain number of cards to be signed before there could be a vote; and that she read the card before signing it.

[177] When called by Respondent, she testified that she signed and dated the card.

[178] When called by Respondent this witness, whose name is now Pamela Longacre, testified that she signed the card.

[179] When called by Respondent, she testified that she signed the card; and that she was told by different people in the NPO that the purpose of the card was to show that she was in support of the NPO.

[180] When called by Respondent this witness, whose name is now Ann Ratcliff, testified that she signed and dated the card; that she asked Hurst if the card would obligate her to vote for the Union and Hurst said no they just needed enough people to sign the cards so that they could have an election; that Hurst said that she would not have to join the Union if she did not want to; that she read the card before she signed it and Hurst did not tell her to ignore what was printed on the card; and that most of her conversations with Hurst occurred after she signed another card and before she signed the January 1993 card.

[181] When called by Respondent, Joanne Reynolds testified that she signed and dated the card. She also testified that before she signed a card in 1989 Tillow said that signing a card did not obligate the employee to join the Union; and that she read the 1989 card before she signed it and no NPO supporter told her that she could disregard the language that was printed on the card.

[182] Subsequently she was called by Respondent and she testified that she signed the card; and that Kleitz told her that the Union needed so many cards so that "they would have the right to get a vote." She testified that she read the card before signing it.

[183] When called by Respondent, she testified that she signed the card; that Kleitz told her that the card would be used to get an election at the hospital; that she read the card; and that no one told her to ignore what was printed on the card.

[184] The parties stipulated that Riggs appears on the list which has been received as GC Exh. 2 under the name of Knight. When called by Respondent, she testified that she signed the card.

[185] When called by Respondent, Louise Robinson testified that she signed the card and that when Ball gave her the card she said that it was for representation.

[186] When called by Respondent, Sherria Robinson testified that she signed the card; that Doyle told her that if they had enough cards they would have an election to vote in a union; and that she read the card before signing it.

[187] When called by Respondent, she testified that she signed the card.

[188] When called by Respondent, she testified that she signed the card; that Dea Doyle told her that the card was so that they could vote yes or no for the Union; and that she probably read the card before signing it and no one told her to disregard what was printed on the card.

[189] When called by Respondent, Sherry Rumbaugh testified that she signed the card.

[190] When called by Respondent, she testified that she signed and dated the card.

[191] She testified that she was told by Margaret Kelly, who gave her the card, that the only purpose for signing the card was to get an election; that she was pretty sure that she only signed one card; and that she read the card before signing it and no one told her to ignore what was stated on the card. When shown it, she conceded that she had previously signed a card. Subsequently she testified that she could not remember what happened before she signed which card. Kelly denied Sayers' assertion.

[192] When called by Respondent, Barbara Schmidt testified that she signed and dated the card.

[193] When called by Respondent, she testified that she signed the card.

[194] When called by Respondent, she testified that she signed the card; that Schmidt said that they were collecting cards in order to vote for the Union; and that she read the card before she signed it.

[195] When called by Respondent, she testified that she signed and dated the card; that Nancy McDonald told her before she signed the card that if they collected enough cards, they would be able to have an election; and that she read the card before she signed it.

[196] Tana Scott, whose surname is now Bolus, testified that Kleitz told her that by signing the card she, Kleitz, was agreeing to have a vote that the NPO could collectively bargain with the hospital; that Kleitz never said that by signing the card she would be joining the Union; that she assumes that she read the card before signing it; and that no one told her to ignore the language on the card. Kleitz testified that she did not have any discussions with this card signer regarding the purpose of the card before this individual signed the card.

[197] When called by Respondent, Thomas Scouller testified that he signed the card.

[198] When called by Respondent, she testified that the signature and date in the card were her handwriting.

[199] When called by Respondent, she testified that she signed the card.

[200] Vanja Selvaraj testified that she signed a union authorization card in December 1993. One of the counsel for the General Counsel indicated that she did not have possession of a card with this witness' signature on it, stating "it appears to be lost."

[201] When called by Respondent, she testified that she signed the card.

[202] When called by Respondent, she testified that she signed and dated the card.

[203] When called by Respondent, she testified that she signed and dated the card.

[204] When called by Respondent, she testified that she signed the 1993 card; that she was told prior to signing the card that it would give the Union the right to have a vote and that was the only purpose of the card; that she probably read the card before signing it and she did not remember McGiveney telling her to ignore what the card indicates; that she did not think that she signed a union authorization card before this one; that she could be mistaken about exactly what was said regarding the purpose of this card; that she did sign another card in June 1991, another one in September 1991, and another in November 1992, all in her maiden name, Culver; and that McGiveney explained that the purpose of the card was to be able to get a vote for the Union, so that they could get a union and she, Sharp, was signing the card supporting the idea of having a union.

[205] When called by Respondent, Carrie Shelburne testified that her married name is Allen; that she signed the 1993 card; that Wesley Pitts gave her the card and before she signed it he told her that the card was to get a vote for the Union, just to have a vote at the hospital, and it doesn't' mean that you are for the Union, it's just for them to get enough cards for a vote; that she thought that she read the card before signing it; that she asked Pitts if the language on the card meant that she was for the Union and Pitts said that it would just allow a vote at the hospital and she was not saying that she would vote for the Union; that she thought she read the card before signing it but she could not remember that far away; that no one told her to ignore the language on the card; that she thought she signed one card before this one; that she did not remember signing the card dated "1/5/94" (GC Exh. 443), as Carrie Allen but it was her signature; that she also signed the "8/23/91" card as Carrie Hicks (GC Exh. 444); that Pitts gave her the 1991 card; that she may have been mistaken when she testified that Pitts gave her the "7/15/93" card (GC Exh. 276); that the conversations that allegedly took place with Pitts probably happened in 1991; that Doyle told her that the only purpose of the 1993 card was for an election; that she clarified the purpose of the card with Doyle the same way she did with Pitts; that Doyle said that it was just to get an election and it did not mean that she was for the Union; that she was aware that Doyle no longer works at Audubon; and that she could not recall when she had the conversations with Doyle.

[206] When called by Respondent Barbara Shofner testified that she signed the card; and that prior to signing the card Clark asked her if she wanted the NPO to represent her in negotiations and she said yes and signed the card.

[207] When called by Respondent, she testified that she signed the card; that Gamble said that the card did not commit her to anything and she would get information from the Union; and that she probably read the card before signing it.

[208] When called by Respondent, she testified that she signed the card; that Lisa Cain gave her the card; that Cain did not say anything different than was written on the card; that Cain did not tell her that she was authorizing the Union to represent her in collective bargaining; and that she read the card before signing it and Cain did not tell her to ignore what was written in the card.

[209] When called by Respondent, he testified that he signed the card and also another card which was marked for identification (GC Exh. 458(b)), which is dated 11/9/91.

[210] Peggy Smith (now Fields) injured her leg in May 1993 and she was out of work from then to January 1994, except for 5 days in July when she returned to Audubon before reinjuring her leg.

[211] When called by Respondent, Angela Springate testified that she signed the card; and that she left the hospital before the election.

[212] When called by Respondent, Linda Steinmetz testified that she signed and dated the card.

[213] When called by Respondent, she testified that she signed the card; that Ann Hurst told her she should sign the card to get information about the NPO; that she could not recall reading the information on the card; and that she did fill in the information on the card so she did read that part of the card but she did not remember reading the top of the card.

[214] Subsequently Respondent called Stoess who identified her two cards. She testified that with respect to the 1992 card she was told that the cards would enable the NPO to solicit a vote at the hospital; that with respect to signing her 1994 card she was told that if she did not sign the card the hospital might challenge her when she went to vote, and in order to be able to vote she would have to sign a new card; that Dee Doyle told her this; and that Doyle said that "I probably wouldn't' be able to vote because the hospital could challenge my card if I didn't' re-sign." On cross-examination she testified that she read both cards before she signed them; that she initiated conversations with managers Karen Purviance and Marilyn Underwood Riley both of whom told her that the hospital would not have challenged her vote that she had not signed the second card; that RN Mary Potter overheard her 1994 conversation with Doyle regarding signing the card; that Doyle said that

her prior card was not current and she would have to resign; and that Doyle said that the company might challenge her vote not her card. At one point asserting that she remembered the exact words, Potter testified that she overheard Doyle tell Stoess that "you need to sign the Union card or you can't' vote," or "if you didn't' sign a card you couldn't' vote in the election" or "if you don't' sign the Union card, you don't' get to vote." Subsequently Potter testified that she only heard a portion of the conversation between Doyle and Stoess and she did not know if the portion that she heard was conditioned on obtaining enough signatures for there even to be an election. On rebuttal Doyle testified that before Stoess signed the 1992 card she told her that it was an authorization card for representation; that she told Stoess that the second card was a "re-sign" card and she believed that she told Stoess that they were asking everyone who had signed a card over a year previously to re-sign "so if and when we did get to go for a vote that the hospital could not say the card was outdated and challenge it or throw it out or something"; and that she did not tell Stoess that she would not be able to vote in the upcoming election if she did not sign the second card.

[215] When called by Respondent, she testified that she signed and dated the card.

[216] McGiveney testified that Street was a mobile nurse as of December 16, 1993.

[217] When called by Respondent, Margaret Sullivan testified that she signed the 1993 card; that before she signed the card Tallant told her the purpose of the card was for the employees to be able to vote for a union if they wanted one; that Tallant said that the only purpose of the card was to get an election; that she probably read the card before signing it; that she did not remember Tallant telling her to ignore what was printed on the card; and that earlier she signed another card when Tallant told her that he was interested in getting an election. On rebuttal Tallant testified that he told Sullivan that the card was for the NPO to represent her for any future bargaining and they would need to obtain the signatures on authorization cards of at least 30 percent of the employees in the bargaining unit in order to petition for an election; and that he never told Sullivan that the only purpose of the card was to get an election. On cross examination Tallant testified that he told Sullivan that the NPO had to win the election for her to be a member of the NPO.

[218] She testified that she was told that the card was to allow a vote to take place for union representation; that she did not recall that she was told that it would be used for any other purpose; that she thought that she read the card; and that she was not told to ignore what was written on the card.

[219] His job description was received as R. Exh. 10.

[220] Her W-4 (GC Exh. 426), was received for purposes of comparison. When called by Respondent, she testified that she signed and dated the card. She also testified that she read the card before she signed it, no one told her to ignore what the card said before she signed it and the only information she had about the purpose of the card came from friends and not from any NPO supporter or NPO literature.

[221] When called by Respondent, she testified that she signed the card. Also she testified that she signed another card dated "12-9-92."

[222] When called by Respondent, she testified that she signed and dated the card; that before she signed the card Pate told her that signing did not mean that she had to vote for the Union; that she read the card before she signed it and Pate did not tell her to ignore the language on the card; and that she did not remember exactly what Pate said to her before she signed the card and it was pretty busy in surgery that day.

[223] When called by Respondent, she testified that she signed and dated the card.

[224] She testified that she was not sure whether she read the card but no one told her to ignore what was printed on the card or said anything inconsistent with it.

[225] When called by Respondent Patricia Wallace testified that she signed and dated the card.

[226] When called by Respondent, she testified that she signed the card; that Tallant told her that the card would be used "just [to] get information about the Union"; that Tallant told her that if enough people signed the card there would be a vote; that she was not sure if it was Tallant who said this; that Tallant said that it did not mean that she was voting for the Union; that she read the card before signing it; that Tallant did not tell her to ignore the language on the card; and that it was hard to recall what Tallant told her when he gave her the card. On rebuttal Tallant testified that before she signed the card he told Walter that the card was an authorization card to represent her in any future bargaining and it was necessary to get 30 percent of the employees in the bargaining unit to sign cards to petition for an election; and that he never told Walter that the only purpose of the card would be to get some information from the NPO.

[227] When called by Respondent, she testified that she signed the card and that she was told only that it was to have an election for the Union and to learn more about collective bargaining. She also testified that she read the card before she signed it.

[228] When called by Respondent, she testified that she signed the card; and that she thought that Doyle told her that by signing the care she would become a member of the NPO.

[229] Subsequently she was called as a witness by Respondent and testified that she signed the card; and that she was told that the card was just to get a vote but she couldn't' identify who told her this. She also testified that she read the card before signing it.

[230] Her W-4 (GC Exh. 429), was received for purposes of comparison. Respondent indicated that it did not object to my making the comparison. The card, with which the comparison is to be made, was marked for identification as GC Exh. 22 and received at Tr. 1549. Subsequently Respondent called her as a witness and she identified the card.

[231] Id.

[232] When called by Respondent, she testified that she signed and dated the card.

[233] George Westfall's W-4 form was received pursuant to a stipulation as GC Exh. 289.

[234] When called by Respondent, she testified that she signed and dated the card.

[235] When called by Respondent, Carolyn Whitehouse testified that she signed and dated the card and that at the time she was a full-time charge nurse.

[236] When called by Respondent, she testified that she signed and dated the card.

[237] When called by Respondent, Hazelle Willoughby testified that her name now is Stansbury; that she signed the 1993 card; that prior to signing the card a supporter of NPO told her that they wanted her signature on the card so that she could become a member of the NPO; and that earlier she signed another card.

[238] When called by Respondent, she testified that her surname now is Hawkins; that she signed the card; that she probably read the card before signing it; and that she asked someone at the NPO whether signing the card would obligate her to joining the Union and she was told it would not.

[239] When called by Respondent, she testified that she signed the card.

[240] When Karen Wooldridge was called by Respondent, she testified that she signed the card; and that she was told that by Johansen that if enough signatures were obtained, then a vote would be held concerning whether the Union would represent the involved employees.

[241] When called by Respondent, Barbara Wrocklage testified that she signed the card.

[242] When called by Respondent, she testified that she signed the card; that she knew that the general purpose of the card was to get an election; and that she read the card before she signed it and no one told her to disregard the language on the card.

[243] Her W-4 (GC Exh. 427), was received for purposes of comparison. When called by Respondent, she testified that she signed the card; that before she signed the card she told Vickie Ball that she, Yates, did not know if she was interested in the Union or not and Ball said sign it anyhow; and that she reviewed the card 10 or 15 minutes before signing it.

[244] When called by Respondent, she testified that the handwriting, including the signature and date, on the card was hers.

[245] When called by Respondent, she testified that she signed the card; that she graduated from her nursing program in May 1993; that when

she signed the card she had already found out that she was going to be working as an RNA at Audubon because human resource person, Fran Taylor, and Manager Joan Wempe told her; and that she received an offer of employment as a RNA at Audubon while she was working as a PCA there.

[246] Lisa Zottman-Dixon testified that when Wesley Pits gave her the 1993 card he said that the only purpose it would be used for would be to get a vote and he did not tell her she would be joining the Union; and that she read the card before signing it. Subsequently she testified that she also signed an authorization card for the same Union in 1991; that she read that card; and that Pitts did not tell her to ignore the language on either card. Then she testified that there was not much discussion before she signed the 1993 card "it was a matter of do you want to sign the card or not," and that regarding the 1991 card Pitts told her they needed a certain number of people to sign cards in order to have a vote and she did not recall him saying anything else.